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DOD OFFICER PROMOTION PROCEDURES

HEARING

BEFORE THE

SUBCOMMITTEE ON
MANPOWER AND PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

MARCH 3, 1988

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DEPARTMENT OF DEFENSE OFFICER PROMOTION PROCEDURES

THURSDAY, MARCH 3, 1988

U.S. SENATE,
SUBCOMMITTEE ON MANPOWER AND PERSONNEL,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room SR-385, Russell Senate Office Building, Senator John Glenn, (chairman) presiding.

Present: Senators Glenn, Exon, Wilson and McCain.

Staff present: Arnold L. Punaro, staff director; Patrick A. Tucker, minority counsel; David S. Lyles and Frederick F.Y. Pang, professional staff members; and Debra A. Rice, staff assistant.

Also present: Phillip P. Upschulte, assistant to Senator Glenn; Terrence M. Lynch, assistant to Senator Shelby; William J. Wight, assistant to Senator Warner; and Anthony H. Cordesman, assistant to Senator McCain.

OPENING STATEMENT OF SENATOR JOHN GLENN, CHAIRMAN

Senator GLENN. The subcommittee will be in order.

I apologize for the late start this morning, but we had a vote that started at 9:30. So I got over there and voted and got over here as quickly as I could.

I saw Senator Wilson, and he said he will be along very shortly.

The Subcommittee on Manpower and Personnel meets today to receive testimony from the Department of Defense on officer promotion procedures, procedures that are governed by statute and by DOD and service policies.

This is not a subject that is going to produce a lot of flashy headlines on tonight's news programs, probably, or in tomorrow's papers. In fact, most of the discussion today may be rather technical and even dry to some people.

But the committee has a responsibility to the men and women in uniform to ensure that the officer promotion system throughout the military services is fair, objective and impartial. I can tell you that I personally regard this as a sacred trust. I do not overstate that.

The current statutory procedures governing the promotion of officers on the active duty list are embodied in Title 10 of the U.S. Code. These procedures evolved from the separate statutory provisions of the military services which were consolidated into one place in the law when the Defense Officer Personnel Management Act, or DOPMA, was enacted in 1980.

The DOPMA not only consolidated but, to a large extent, made uniform the procedures the military services were to follow in selection of officers for promotion.

The DOPMA selection procedures provide the military services with a framework for selecting officers for advancement to fill grade requirements in a fair and objective manner.

This framework covers the entire range of the selection process, including rules governing the authority to convene boards; the composition of boards; notification procedures; establishment of eligibility criteria; the manner in which guidance is furnished to the boards; and procedures for processing the boards' reports—in other words, approval, modification, or disapproval of these reports.

In passing DOPMA, the Congress recognized it was not possible to anticipate and put into law language to cover all circumstances that could arise. The Congress further recognized that the language of the law needed to be sufficiently broad to accommodate certain requirements that may be unique to a particular military service.

I believe the promotion framework laid out in DOPMA has worked very well, but there may be a few areas in the statutes that are somewhat ambiguous and should be changed. However, I want to reserve judgment on this until we have heard from our witnesses today.

At this point, I think a few words on why we are having this hearing at this time might be appropriate.

Last year, the Committee on Armed Services became aware of certain procedural irregularities with regard to the Marine Corps two star list. The list contained the names of 10 selectees, 8 of whom were selected under original instructions given by the convening authority, the Secretary of the Navy, and two who were added to the list after the convening authority had reviewed the original list of eight and issued guidance to add two more to the list.

The committee devoted a great deal of time last year to this matter, though not publicly. Several of us were very much involved with this, including the chairman of the full committee and the ranking minority member, as well as Senator Wilson and myself, and several staff people. We spent a great deal of time on this last year.

In our consideration of the Defense Department report on the facts and circumstances involved in this case, the committee concluded that there were improprieties regarding the selection of the two additions to the list. On that basis, the committee recommended to the Senate that it confirm only the original eight selectees. The Senate took the action that was recommended.

Let me add, too, that this was in no way a criticism of the two who were added. They were not party to what was done. They were more or less pawns in this situation. It was good that they were thought of enough, I guess, by their superiors that this action took place. But letters were entered into their records that what had happened with the selection board process last year was in no way to be considered by future selection boards. That was made very, very clear.

In the course of the committee's deliberations leading to this result, it became obvious that certain judgments were made on the basis of governing statutes that were counterproductive to an unbiased promotion process. The Department of Defense apparently reached the same conclusion, because they took action to modify the DOD directive on officer promotion procedures.

I will be interested in hearing from our DOD witness on this.

It occurs to me that it may be appropriate to incorporate some of these changes into the statutes that we now have. We will have to decide on that.

Before we have our opening comments, I would ask Senator Wilson, the ranking minority member of the subcommittee, if he has any opening remarks.

Senator Wilson.

Senator **Wilson**. Thank you very much, Mr. Chairman. I look forward to hearing Dr. Armor's testimony—actually, I have read it—concerning procedures presently in place in the Department of Defense regarding officer promotions.

As the chairman has indicated, last year, the committee had to consider at least two cases in which allegations were made that the procedures were not working.

I am personally convinced that both of those cases arose primarily because of a lack of clarity in the law.

So I think it is proper that this subcommittee undertake the inquiry that we are focused upon this morning.

The subcommittee was directed by the full committee to determine whether legislation is needed in the area. I am aware that the Department has made several changes in its regulations as a result of the case last summer in an effort to try to clarify what I think we would all agree were some ambiguities, and I applaud the Department for those efforts.

Nonetheless, I think there is an obligation to ensure that the basic law is clear, and, therefore, I think that it may be necessary—in fact, it is probable—that legislative action is required to assist in that clarification.

Some of the specific issues I will address in greater detail in questions to Dr. Armor.

But there are two areas which I consider to be of a policy nature, which I think do require mention at this point.

It is, I think, important that we determine whether, as a matter of policy, the existing law provides service Secretaries with the appropriate and necessary flexibility to manage the number of officers with particular skills in an armed force.

As I understand the existing law, a Secretary can limit the number of officers with particular skills who may be selected for promotion only by establishing separate, competitive categories for officers with those skills. I note that Dr. Armor's testimony touches on that point.

Does this, for example, give the Secretary of the Navy sufficient flexibility to limit the number of surface warfare officers who may be promoted if the Secretary determines that more aviators and submariners are needed?

A second issue is whether, as a matter of policy, we have the purely competitive selection board process applicable to their correct levels of rank. Under existing law, officers selected for one or two star rank are selected by selection boards, while we grant the President total authority to select officers for promotion to three and four star ranks.

The question arises should the selection board process continue to apply to any flag and general promotions, or should, in fact, we expand the President's authority?

I am open-minded on both of these issues and look forward to discussing them with our witnesses and others.

I do think that we must consider these basic policy questions as part of our oversight process, along with issues that relate only to clarifying the existing law.

Mr. Chairman, I thank you for convening the hearing and look forward to working with you again this year as the subcommittee seeks to ensure fair compensation and benefits and fair career expectations, in fact, bright career expectations, for military personnel.

Thank you.

Senator **Glenn**. Thank you very much.

Let me add one thing.

On these matters that we have before this committee, there is more of a bipartisan approach, I think, than on almost anything that we do in committee work around here. We don't look at this as Republicans or Democrats. We look at it as what is necessary for the manpower needs, the fairness, and the treatment of the people in the armed services, all the armed services.

This was followed before, when Senator Wilson was chairman of this subcommittee, and it is followed now that I am chairman of it. I am just glad it is operating in that manner. It is a pleasure.

Senator **Wilson**. It is a blessed relief, is it not?

Senator **Glenn**. It's a blessed relief, indeed. We don't have to be guarding our tail feathers all the time around here.

Our principal witness this morning is Dr. David J. Armor, who is Principal Deputy Assistant Secretary of Defense for Force Management and Personnel.

He is accompanied by Lt. Gen. Anthony Lukeman, the Deputy Assistant Secretary of Defense for Military Manpower and Personnel Policy.

These gentlemen are responsible for oversight of the DOPMA and the Defense officer promotion system in the Office of the Secretary of Defense, in OSD.

General Lukeman, why don't you just come up to the witness table, too, unless Dr. Armor wants you back in the recesses.

Dr. **Armor**. Not at all. I was going to raise that if you did not, sir, so thank you.

Senator **Glenn**. That is fine.

Most of our questions will be for Dr. Armor, but I am sure there may be comments that the General would wish to make and that we would want him to make.

I would ask you, General, to feel free, when you think there is something that needs to be said here, to interject your views, whether asked or not.

General **Lukeman**. Thank you, sir.

Senator **Glenn**. We welcome both of you and look forward to receiving your testimony.

Dr. Armor, go ahead with your statement.

STATEMENT OF DAVID J. ARMOR, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR FORCE MANAGEMENT AND PERSONNEL, ACCOMPANIED BY LT. GEN. ANTHONY LUKEMAN, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MILITARY MANPOWER AND PERSONNEL POLICY

Dr. **Armor**. Good morning, Mr. Chairman and Senator Wilson.

I have a very brief statement before we get to your specific questions.

I am, of course, very pleased to be able to be here this morning, representing the Department, to discuss your concerns regarding our officer promotion program and, in particular, whether legislative remedies are warranted to resolve any of your concerns or to correct any aspects of the applicable law that may be ambiguous or in conflict with one another.

Before discussing the specifics, I do feel that it is appropriate, in fact necessary, to tell you that I firmly believe, and I think this reflects the leadership of the Department of Defense throughout, that the selection board process that we have is remarkably successful in selecting the best qualified officers for promotion to the next rank.

It is widely respected throughout all military services as an inherently fair process and I think it is especially respected by the officer corps in each service. Certainly, if it were not widely respected, I think that it would be something that everybody would hear about very, very quickly.

As the committee is well aware, however, during the past several years, there have been a couple of incidents of alleged improprieties with respect to the selection board standards, practices, and policies, and they have basically raised questions about how we conduct our business in this area.

Investigations by the DOD Inspector General last year and the General Counsel revealed the need for some additional guidance concerning officer selection board proceedings under the provisions of Chapter 36, Title X, of the U.S. Code.

As a result, last spring, the Secretary of Defense ordered revision of the appropriate directives to ensure that the officer promotion selection process within the Department is conducted in strict compliance with the law.

Less than 50 days after receipt of the Secretary's guidance, a revised DOD directive was signed by Mr. Taft, which provided, first, extensive guidance on the communications with selection boards, which is one of the issues that you and members of your committee have raised; improved controls to ensure that the best qualified officers are selected for promotion consistent with service needs; and, third, increased oversight responsibilities for the Office of the Secretary of Defense, and, in particular, of the office I am representing this morning, Force Management and Personnel.

The increased specificity of the guidance provided by DOD regulation has resulted in some very significant changes in the mechanics of the way we handle, process, and review the board results.

First of all, and I think most importantly, in the area of communication between a service Secretary or the service Chief and the board president or any member of the board, we now require that any of those communications, designed to express the views of the senior leadership, be provided in writing, be furnished to each board member, and be made a part of the official board record.

All board members must be further informed of their responsibilities for performing their duties without prejudice or any impartiality, and they are required to report to the service Secretary or the Secretary of Defense any attempt to compromise the integrity of the board, including improper influence of superior military or civilian authority.

The directive prohibits any direction to select or not select a particular individual. No one may submit unfavorable information to the selection board regarding an officer, except as clearly prescribed in service regulations, which provide an appropriate due process necessary to protect the individual's rights.

Further, any unsolicited favorable information not already in the officer's record must be approved by the officer in question prior to its inclusion in the official record.

I might say that by having these items in the official record, that further enhances the ability of the Secretary's office to conduct an appropriate review. I will come back to that in a moment.

In order to balance the needs of the service with the requirement that we select the best qualified, the service Secretaries are permitted to provide minimum selection numbers for a particular skill; however, maximums may be prescribed only for a competitive category.

We may want to come back and talk about this in the questions and answers. Let me say that that provision which we added was new to the directive last spring. But it just embodied some practices that took place as a matter of course anyway.

Additionally, the directive now clearly specifies that, should a service Secretary determine that the needs of the service warrant an increase in the maximum number of promotions within a competitive category after the board has convened, such an increase must be approved by the Secretary of Defense.

The directive also specifically increases the responsibility of the Assistant Secretary of Defense for Force Management and Personnel, in order to provide more effective oversight for the overall defense officer promotion program.

This oversight not only includes monitoring the implementation of the program, but also the careful analysis of the annual defense officer promotion reports and close scrutiny of officer selection board reports for grades O-6 through O-8.

We feel that the modifications to the directive have improved the process and have worked quite well in the past 9 months. We do understand that there are a number of further issues that you and members of the committee and members of the staff have raised, and we are quite prepared to discuss those with you and review our directives further.

The first issue that has been raised concerns the process by which the Secretary of Defense exercises his authority and responsibility to ensure the board proceedings and recommendations meet all of the requirements of law and policy, and this includes the delegation of authority issue.

We intend to review our procedures in consideration of all of these events in the past several years, and particularly the changes to the processing of selection board results contained in the DOD Reorganization Act of 1986, so-called Title IV, which does change the relationship between a service Secretary, the Joint Chiefs of Staff and their review of promotion board reports.

The act requires, as you know, the Chairman of the Joint Chiefs of Staff to review the results of selection boards, which have considered any officers with service in joint duty assignments.

Should the Chairman of the Joint Chiefs of Staff and the service Secretary be unable to resolve a disagreement, then the Secretary of Defense has to resolve that disagreement between the service Secretary and the Chairman of the JCS. So that is a significant change in itself, and it raises the whole question of the way in which we have our own review procedures in place for that Secretary of Defense review.

Second, we plan to reconsider and look at the previously mentioned views that the board is authorized to recommend; the number that it is authorized to recommend can be increased after the board convenes, with the written approval of the Secretary of Defense.

We will also review our current position—and this is a point that Senator Wilson has raised—the whole area of recommendations about minimum skills and maximum numbers in skill areas. That is not part of our directive at the present time. But we think that this is an area that does require review because certainly it raises the issue of oversight of the propriety issues and the questions of could it be misused. Also, it has to do with the balance between selecting the best qualified and the service Secretary's responsibility to manage the officer corps appropriately in meeting service needs.

We plan to revise our current policy to require that the Office of the Secretary of Defense review all board reports selecting officers to the grades of O–6 through O–8, rather than a sample or a periodic review, as our directive currently contains.

This, in fact, will bring the directive in line with current practice.

The Deputy Assistant Secretary of Defense for Military Manpower and Personnel Policy, General Lukeman, has established a working group, a study group, that will gather representatives from all the services, the JCS and our office, to basically look at these different issues that I have touched on briefly and to make any recommendations that may be necessary.

I sincerely solicit input from this committee concerning issues that need to be examined, and I will be happy to share the results with members of the staff and the committee.

Thank you again for having a chance to be here to clarify our policies, and I will be happy to answer your questions.

[The prepared statement of Dr. Armor follows:]

PREPARED STATEMENT OF DAVID J. ARMOR

Good morning Mr. Chairman, subcommittee members, and staff members.

It is a pleasure to appear before you today to discuss the concerns of the committee regarding the Defense Office Promotion Program and whether legislative remedies are warranted to resolve these concerns or to correct aspects of the applicable law that are ambiguous or conflicting.

Before discussing specifics, I feel compelled to tell you that I firmly believe the selection board process is remarkably successful in selecting the best qualified officers for promotion to the next rank. It is widely respected as an inherently fair process by the officer corps in each service. However, as this committee is well aware, during the past several years, incidents of alleged improprieties with respect to selection board standards, practices, and policies have raised serious questions about the DOD promotion program. Investigations by the DOD Inspector General and General Counsel revealed a need for additional guidance concerning officer selection board proceedings recommending officers for promotion under the provisions of Chapter 36 of title 10, of the United States Code. As a result, the Secretary of Defense ordered the preparation or revision of appropriate directives to ensure that the officer promotion selection process within the Department is conducted in strict compliance with the law.

Less than 50 days after receipt of the Secretary's guidance, a revised DOD directive was signed by the Deputy Secretary of Defense which provided: (1) Extensive guidance on communications with selection boards, (2) improved controls to ensure that the best qualified officers are selected for promotion consistent with service needs, and (3) increased oversight responsibilities for the Office of the Secretary of Defense.

Increased specificity of the guidance provided by DOD regulation has resulted in significant modifications to board mechanics. In the area of communications between a service Secretary or service Chief and the board president or members of the board, we now require that those communications designed to express the views of the senior leaders be provided in writing, furnished to each board member, and made a part of the board record. All board members must be informed of their responsibilities for performing their duties without prejudice or impartiality and are required to report to the service Secretary or Secretary of Defense any attempt to compromise the integrity of the board to include improper influence of superior military or civilian authority. The directive prohibits any direction to select or not select a particular individual. No one may submit unfavorable information to a selection board regarding an officer except as clearly prescribed in service regulations which provide the "due process" necessary to protect the individual officer's rights. Further, unsolicited favorable information, not already included in an officer's record, must be approved by the officer affected prior to its inclusion in the official record.

In order to balance the needs of the service with the requirement to select the best qualified, service Secretaries are permitted to provide minimum selection numbers for a particular skill, however, maximums may be prescribed only for a competitive category. Additionally, the directive now clearly specifies that, should a service Secretary determine that the needs of the service warrant an increase in the maximum number of promotions a board may recommend after the board has convened, such an increase must be approved by the Secretary of Defense.

The directive also specifically increases the responsibilities of the Assistant Secretary of Defense for Force Management and Personnel to provide effective oversight for the Defense Officer Promotion Program. This oversight not only includes monitoring the implementation of the program but also the careful analysis of the annual defense officer promotion reports and close scrutiny of selection board reports for grades O-6 and above.

Although we are satisfied with the implementation of the directive by the services during the past 9 months, a number of issues remain open for further study and potential resolution. The first issue involves the process by which the Secretary of Defense exercises his authority and responsibility to ensure that the board proceedings and recommendations meet all the requirements of law and policy.

We intend to review our procedures in consideration of the events of the past several years and particularly the changes to the processing of selection board results contained in the DOD Reorganization Act of 1986. The Act requires the Chairman of the Joint Chiefs of Staff to review the results of selection boards which considered officers with service in joint duty assignments. Should the Chairman of the Joint Chiefs of Staff and the service Secretary be unable to resolve a disagreement as to whether the board complied with the guidelines of the Secretary of Defense concerning appropriate consideration of joint duty performance, such disagreement must be forwarded to the Secretary of Defense for resolution.

We plan to reconsider the previously mentioned views of the Department that the number of promotions a board is authorized to recommend can be increased after the board convenes—with the written approval of the Secretary of Defense. We will also review the Department's position that, while a service Secretary may recommend minimums within a competitive category, he may not provide maximum guidelines. We believe this "not more than" question is a key one in view of the ability this would provide a service Secretary to alter the character of a service, especially in the field grades and flag officer ranks.

We also plan to revise our current policy directives to require that the Office of the Secretary of Defense review all boards selecting officers of the grades O-6 through O-8 rather than a sample of such boards required by the current directive. The revised directive will then comply with our current practice.

The Deputy Assistant Secretary of Defense for Military Manpower and Personnel Policy is establishing a study group consisting of representatives from his office, the DOD General Counsel, the Joint Staff, and the military services to thoroughly review the aforementioned issues, as well as other incongruities and ambiguities in the law or policies. This study group will make appropriate recommendations concerning legislative or regulatory remedies that may be necessary. I solicit input from this committee concerning issues that need to be examined and I will be happy to share the results of this effort with the members and staff of the committee.

I wish to thank you again for this opportunity to appear before you. I would be pleased to respond to your questions.

Senator GLENN. Senator Wilson has another commitment to make as shortly after 10 as he can possibly get there, so we will let him go ahead with his questions first this morning and then hope that he can get back later.

Senator WILSON. Thank you very much, Mr. Chairman. I appreciate your courtesy and kindness. I will ask just a couple of questions of Dr. Armor, and then, as you indicated, I do have to go. But I will try to get back.

The first question is the one that you just touched on a moment ago, and it is the authority that the service Secretary has to change the number of officers to be selected after the board has made its report. That is what occasioned the flurry of attention and excitement last year.

I think there really was a lack of clarity because, while I am not sure that the law very clearly provides that authority, it seems that there has been some tradition to that effect. I think there needs to be a clearer understanding.

Because one of the major goals of the process, as Dr. Armor has rightly indicated this morning, is to assure the fact, as well as the appearance, or I should put it the other way, the appearance as well as the fact, of impartial selection, it seems to me, Mr. Chairman, that there is a great difficulty in a process that permits the service Secretary to make a change, even with the approval of the Secretary of Defense after the board has reported.

Now, at any time up to the point where they have reported, although I think some discretion ought to be exercised, I can understand that it might, on occasion, occur that the Secretary receives information or in simply reviewing his own staff recommendations and his own deliberations, might come to the conclusion that he has erred and that he needs one more or less of a particular category. I can understand that.

But it seems to me that what we really should do is to adopt a process whereby the Secretary, once he has had sufficient time to try to determine what the appropriate number is, gives that to the board, and if the board comes back with that number, that he does not thereafter send their recommendations back and say I need another aviator, I need another whatever.

It would seem to me that if that conclusion is warranted by objective evidence, he is really better off convening a new board at some point down the road, and simply taking the recommendations of that board and acting upon them or forwarding them through the normal process for confirmation.

I think it creates great difficulties if the Secretary, after the board has reported back, changes the number.

I wonder what your feeling is?

Dr. **Armor**. I guess technically what you are saying is correct—it could happen after a board report—although the wording in our directive is that the number can be increased after a board convenes. Certainly I think our intent here is to provide some flexibility; as you know, it is hard to anticipate all of the circumstances, particularly some administrative error or some late discovery that the numbers you have given a board are wrong and maybe possibly the board president brings it to the Secretary's attention that there is a problem with these numbers.

I think the issue here is if the motivation for that change is to improperly influence the board, that is one thing, and that certainly is not something that anyone would want to see happen. I think that, again, is part of the oversight process. That is why we said that the Secretary of Defense would have to approve it, so that it becomes open and the purpose of that change can be reviewed and examined.

Senator **Wilson**. But the problem arises, I think, when that determination is made after the service Secretary has seen the names. I mean, if the board comes back to him with recommendations, with a list, and he then decides that he needs a new number, that obviously is what makes suspect the judgment of the need for a new number.

Dr. **Armor**. Yes. As I said in my statement, we are going to review all of these and make sure that we don't do anything that would make it impossible to handle administrative areas, unusual circumstances, unforeseen facts or knowledge, in which it would be legitimate to change that number. I think that is the crux of the problem.

You are not saying there would never be a situation anticipated where that could happen. It is your concern that it would be used because somebody was not happy with the results of the board. And that obviously is not proper.

Senator **Wilson**. Yes.

I think, in order to avoid that unfortunate appearance, a procedure should be adopted whereby a change can be made in the number given to the board, but that the number can be changed by the service Secretary only prior to his seeing their recommendations.

Dr. **Armor**. That is certainly something that we can do. The timing you are saying is the essential point.

Senator **Wilson**. Yes. I think it is critical whether it is before he has actually seen the list of names.

Mr. Chairman, the other question that I had is one that I will just state generally. It is really what is the appropriate level for Presidential authority, as opposed to the normal selection board process. Should it dip down below the three star level?

I will leave you to wrestle with that as I go off to the Commerce Committee.

Senator **Glenn**. Thanks a whole batch. [General laughter.]

Before Senator Wilson leaves, what is your opinion of that?

Dr. **Armor**. Well, of course, the three and four star level positions are the primary organizational management levels of the service, and I think that that may well be appropriate for a different consideration than just the normal board process.

I have encountered no particular problems, or I have not heard any complications arising from that. In fact, this is the first time I have heard that there is a concern that we don't have a board process at the O–9 and O–10 levels.

But we are dealing now with a very, very small number of individuals; individuals who usually run major organizations in the service.

Senator **Wilson**. It is more the other way around, you know, the O–7 and O–8.

Dr. **Armor**. I see.

Senator **Glenn**. So your view would be that they are getting into policy implementation that is a Presidential prerogative and, therefore, no board is appropriate at that level? Would that be your position?

Dr. **Armor**. That is my feeling because of the small numbers and the fact that they are running organizations. I think the board process works very, very well for large numbers of individuals, where you are talking about just best qualified and all of the things that we use to make sure the process works fairly and the needs of the service are met. I think at the O–9 and O–10 levels you may be talking about different kinds of things. Other considerations come into play because they are, in fact, the policy implementers of the services.

Perhaps General Lukeman might have a comment on this.

Senator **Glenn**. I was just about to ask him, because he is one of the people affected by this.

What is your opinion? Do you think it should be board or Presidential selection?

General **Lukeman**. I think that we are probably doing it right, sir.

The reason for the difference, of course, is because of the sensitivity of the positions to which three and four star generals and admirals are appointed, without board action. I think that is entirely appropriate, that it should be that way, that the Chairman and the Secretaries and the White House and the Senate all look at them very carefully; whereas board action for the brigadier generals, major generals, and rear admirals in the Navy is an ongoing process that seems to be working quite well.

Senator **Glenn**. Dr. Armor, in your statement I would just point out one thing that I wanted to comment on.

You stated there were other alleged improprieties. I believe we know that those are not just alleged. There were some real ones.

We found them to be true not just with the Marine two star list last year; but DOD found out that it was also true of an attempt by the Secretary of the Navy to, I think I could use the word "manipulate" properly, manipulate a Navy captain's board about a year ago.

You said it was "alleged." I guess there were never formal charges brought, so I guess the term "alleged" is still proper. But there was not any doubt in anyone's mind as to what happened in that case.

The two star isn't the only thing we have had a problem with. That is the reason for this hearing today.

Let me state this, Dr. Armor.

The Department of Defense reissued DOD Directive 1320.12 on June 3, 1987, and that is a directive which superseded the one issued on March 28, 1983. It provides policy guidance and instructions to the military Departments for the conduct of defense officer promotion programs, as required by statute.

I want to enter into the record the 1983 and the 1987 directives. I ask unanimous consent that those be included in the record.

[The information referred to follows:]

March 28, 1983
NUMBER 1320.12

Department of Defense Directive

ASD(MRA&L)

SUBJECT: Defense Officer Promotion Program

References: (a) Title 10, United States Code (see enclosure 1)
(b) Secretary of Defense Memorandum, "Promotion of Commissioned Officers on the Active Duty List," March 5, 1982 (hereby canceled)
(c) DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976

A. PURPOSE

This Directive:

1. Implements section 622 of reference (a) to prescribe uniform policy and standards for the Defense Officer Promotion Program and to establish format and procedures for the Defense Officer Promotion Report (DOPR).

2. Cancels reference (b).

B. APPLICABILITY AND SCOPE

1. This Directive applies to the Office of the Secretary of Defense and to the Military Departments. The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

2. Its provisions cover commissioned officers on the active duty list in the grades of first lieutenant through brigadier general in the Army, Air Force, and Marine Corps and lieutenant (junior grade) through commodore in the Navy.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

It is the policy of the Department of Defense to:

1. Provide an adequate officer inventory to satisfy projected manpower and skill requirements for each competitive category and grade.

2. Provide an effective management system that ensures appropriate distribution of officers of desired maturity and experience in the various grades.

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3. Provide a vigorous and fully combat-ready officer corps.

4. Provide relatively similar promotion opportunity over a period of 5 years within competitive categories.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)) shall:

a. Provide uniform guidance to the Secretaries of the Military Departments for administration of the Defense Officer Promotion Program.

b. Retain information contained in Military Department DOPRs.

2. The Secretaries of the Military Departments shall:

a. Ensure that DOPRs are prepared according to the format prescribed in subsection G.1., below, and enclosure 3.

b. Submit the DOPRs to the ASD(MRA&L) by January 15 of each year.

c. Before establishing the number of officers that may be recommended for promotion to any grade within a competitive category by each selection board convened under 10 U.S.C. 611(a) (reference (a)), determine, in accordance with section 622 of reference (a):

(1) Requirements in that grade and competitive category, projected for the period over which it is anticipated that officers selected will be promoted.

(2) The estimated number of officers needed to fill vacancies in that grade and competitive category for the period over which it is anticipated that officers selected will be promoted.

(3) The number of officers authorized to serve on active duty in that grade and competitive category.

F. STANDARDS

The following guidelines shall apply to the determinations required by paragraph E.2.c., above:

1. Requirements for each grade and competitive category are the validated numbers determined to be needed based on skill and experience considerations.

2. Estimated vacancies include unfilled requirements at higher grades.

3. The number of officers authorized to serve on active duty in a grade and competitive category may be set lower than actual requirements since grade limitations established in law may not permit requirements to be fully met. The number authorized also may be set higher than actual requirements when warranted by promotions flow considerations in a specific competitive category.

G. DEFENSE OFFICER PROMOTION REPORT

1. Format

a. Overview

(1) This part of the DOPR serves as an introduction and as a brief overview of commissioned officer promotion policy and its relationship to projected commissioned officer requirements of the Military Department concerned. The various competitive categories established by the Secretary of the Military Department concerned shall be identified and described.

(2) This part also shall contain brief comments on the promotion opportunity and timing for each competitive category in the Military Department concerned in comparison to the objectives in subsection G.2., below.

b. Statistics. This part shall contain the commissioned officer selection and promotion statistics in the format prescribed in enclosure 3.

2. Objectives

a. While the process of promoting to requirements by competitive category may result in different promotion timing and opportunity for certain competitive categories, promotion opportunity within a category shall be relatively similar over a period of 5 years. Promotion of officers under the following promotion timing and minimum opportunity is generally desirable.

TO GRADE	TIMING[1]	OPPORTUNITY
04	10 years ± 1 year	80 percent
05	16 years ± 1 year	70 percent
06	22 years ± 1 year	50 percent

[1] Years of active commissioned service plus all entry grade credit.

b. It is recognized, however, that promotion opportunity and timing, as determined by the Secretary of the Military Department concerned, may vary from these targets in promotion categories based on needs.

c. The number of officers that may be recommended for promotion to the grades of colonel or captain (in the Navy) and below from among those being considered from below the promotion zone in any competitive category may not exceed a number equal to 10 percent of the maximum number of officers to be recommended for promotion in such competitive category. If the Secretary of the Military Department concerned determines that the needs of the Military Service concerned require additional recommendations from below the promotion zone, he shall request permission from the ASD(MRA&L) to select a greater number. In this case, the number of officers selected may not exceed 15 percent of the total number of officers that the selection board is authorized to recommend for promotion. For promotion to the grades of brigadier general or commodore and higher, the Secretaries of the Military Departments are authorized to establish a maximum below-the-zone quota of 15 percent, to be computed in accordance with 10 U.S.C. 616 (reference (a)).

3. Procedures

a. All material in the DOPR shall be unclassified.

b. An original and six copies shall be submitted to the ASD(MRA&L), Room 2B269, the Pentagon.

H. INFORMATION REQUIREMENTS

The reporting requirements in this Directive have been assigned Report Control Symbol DD-M(A)1621 under DoD Directive 5000.19 (reference (c)).

I. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents and the Fiscal Year (FY) 1982 DOPR to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) within 120 days.

Paul Thayer
PAUL THAYER
Deputy Secretary of Defense

Enclosures - 3
1. Extracts from Authorities Applicable to the Defense Officer Promotion Report
2. Definitions
3. Commissioned Officer Selection and Promotion Statistics

EXTRACTS FROM AUTHORITIES APPLICABLE TO THE DEFENSE OFFICER PROMOTION REPORT

1. 10 U.S.C. 621 (reference (a))

"Under regulations prescribed by the Secretary of Defense, the Secretary of each military department shall establish competitive categories for promotion. Each officer whose name appears on an active-duty list shall be carried in a competitive category of officers. Officers in the same competitive category shall compete among themselves for promotion."

2. 10 U.S.C. 622 (reference (a))

"Before convening a selection board under 611(a) of this title for any grade and competitive category, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, and (3) the number of officers authorized by the Secretary of the military department concerned to serve on active duty in the grade and competitive category under consideration. Based on such determinations, the Secretary of the military department concerned shall determine the maximum number of officers in such competitive category which the selection board may recommend for promotion."

3. 10 U.S.C. 623 (reference (a))

"(a)* Before convening a selection board under section 611(a) of this title to consider officers for promotion to any grade above first lieutenant or lieutenant (junior grade), the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) The Secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category. Such determination shall be made on the basis of an estimate of:

(1) the number of officers needed in that competitive category in the next higher grade in each of the next five years;

(2) the number of officers to be serving in that competitive category in the next higher grade in each of the next five years;

(3) in the case of a promotion zone for officers to be promoted to a grade to which section 523 of this title is applicable, the number of officers authorized for such grade under such section to be on active duty on the last day of each of the next five fiscal years; and

(4) the number of officers that should be placed in that promotion zone in each of the next five years to provide to officers in those years relatively similar opportunity for promotion."

DEFINITIONS

1. Competitive Category. A separate promotion category established by the Secretary of a Military Department, under 10 U.S.C. 621 (reference (a)), for specific groups of officers whose specialized education, training, or experience, and often relatively narrow utilization, make separate career management desirable.

2. Due-Course Officer. An officer who came on active duty the day he or she was commissioned; has not been awarded service credit; has not failed promotion; has not been promoted from below the zone; and has been on continuous active duty since the day he or she was commissioned.

3. Promotion Opportunity. The cumulative opportunity for selection for promotion of officers who have competed for promotion to the next higher grade. For purposes of the Defense Officer Promotion Program, it is calculated by taking the maximum number of selections that can be made by the selection board and dividing that number by the number of officers in the zone (exclude below- and above-zone eligibles).

4. Promotion Timing. The number of years of active commissioned service plus entry grade credit at which officers are promoted to a particular grade.

COMMISSIONED OFFICER SELECTION AND PROMOTION STATISTICS

FOR FY: ____________ COMPETITIVE CATEGORY:[1] ______________

PAY GRADE		IN THE PROMOTION ZONE			BELOW THE PROMOTION ZONE			ABOVE THE PROMOTION ZONE			PROMOTION TIMING[2] (YEARS-MONTHS) IN THE PROMOTION ZONE	# TWICE FAILED AND SELECTED FOR CONTINUATION FROM ABOVE THE PROMOTION ZONE		
FROM	TO	# SEL[3]	# CONS[4]	% SEL[5]	# SEL[3]	# CONS[4]	% SEL[5]	# SEL[3]	# CONS[4]	% SEL[5]		# SEL	# CONS	% SEL
0-5	0-6													
0-4	0-5													
0-3	0-4													
0-2	0-3													

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[1] To be completed for each competitive category. Show data for selection boards convened during the last fiscal year.

[2] For competitive categories not authorized constructive service credit, show the 12-month average of the total active federal commissioned service of the last due-course officer promoted during each month of the fiscal year. For competitive categories authorized constructive service credit, show the 12-month average of the total active commissioned service plus constructive service credit of the last "typical" officer promoted during each month of the fiscal year.

[3] Show the number selected for promotion.

[4] Show the number considered for promotion.

[5] The number selected divided by the number considered.

Department of Defense
DIRECTIVE

June 3, 1987
NUMBER 1320.12

ASD(FM&P)

SUBJECT: Defense Officer Promotion Program

References: (a) DoD Directive 1320.12, "Defense Officer Promotion Program," March 28, 1983 (hereby canceled)
(b) Title 10, United States Code, Sections 611, 614, 615, 616, 618, 621-623
(c) DoD Directive 7750.5, "Management and Control of Information Requirements," August 7, 1986
(d) DoD Directive 1320.9, "Management of Officers on the Active Duty List by Competitive Category," September 18, 1981

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) and implements Sections 611, 622, and 623 of reference (b) by prescribing uniform policy and standards for the Defense Officer Promotion Program and establishing a format and procedures for the Defense Officer Promotion Report (DOPR). (See enclosure 1.)

B. APPLICABILITY AND SCOPE

1. This Directive applies to the Office of the Secretary of Defense (OSD) and the Military Departments. The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

2. Its provisions apply to the selection of commissioned officers for promotion on the active duty list to the grades of captain through major general in the Army, Air Force, and Marine Corps and lieutenant through rear admiral (upper half) in the Navy.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

It is DoD policy to:

1. Provide an adequate officer inventory to satisfy projected manpower and skill requirements for each competitive category and grade.

2. Provide an effective management system that ensures appropriate distribution of officers of desired maturity and experience in the various grades.

3. Provide a vigorous and fully combat-ready officer corps.

4. Provide relatively similar promotion opportunities over a period of 5 years within competitive categories.

5. Ensure the independence and integrity of selection boards in determining those officers best qualified to meet the needs of the Armed Force concerned as specified by the Service Secretary.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall:

a. Monitor implementation of the Defense Officer Promotion Program.

b. Retain information contained in Military Department DOPRs.

c. From time to time, review reports of selection board proceedings for compliance with law and regulation.

2. The Secretaries of the Military Departments shall:

a. Ensure compliance with Defense Office Promotion Program policy.

b. Before establishing the number of officers that may be recommended for promotion to any grade within a competitive category by each selection board convened under 10 U.S.C. 611(a) (reference (b)), determine, in accordance with Section 622 (enclosure 1) of reference (b):

(1) Requirements in that grade and competitive category, projected for the period over which it is anticipated that officers selected will be promoted.

(2) The estimated number of officers needed to fill vacancies in that grade and competitive category for the period over which it is anticipated that officers selected will be promoted.

(3) The number of officers authorized to serve on active duty in that grade and competitive category during the period over which it is anticipated that officers selected will be promoted.

c. Ensure that DOPRs are being prepared according to the format prescribed in subsection I.1., below, and enclosure 3.

d. Submit the DOPRs to the ASD(FM&P) by January 15 of each year.

F. STANDARDS FOR DETERMINATION OF PROMOTION AUTHORIZATIONS WITHIN A COMPETITIVE CATEGORY

The following guidelines shall apply to the determinations required by paragraph E.2.b., above:-

1. Requirements for each grade and competitive category are the validated numbers determined to be needed based on skill and experience considerations.

2. Estimated vacancies include unfilled requirements at higher grades.

3. The number of officers authorized to serve on active duty in a grade and competitive category may be set lower than actual requirements since grade limitations established in law may not permit requirements to be fully met. The number authorized also may be set higher than actual requirements when warranted by promotion flow considerations in a specific competitive category.

4. The maximum number of promotions authorized within a competitive category may not be increased subsequent to the convening of the selection board without written approval of the Secretary of Defense.

G. COMMUNICATION OF GUIDANCE AND INFORMATION TO SELECTION BOARDS

1. General. The Service Secretary concerned shall provide written instructions to promotion selection boards pursuant to 10 U.S.C. 615 (reference (b)). Such instruction will comply with law and regulation. Selection boards shall adhere to such written instructions. Failure to do so may warrant return of the board report by the Service Secretary for further proceedings as provided by Section 618(a) of reference (b).

2. Communications With Selection Boards. All communications intended to express the views of the Service Secretary, the senior uniformed member of the Service concerned, or other superior authority to the members of a selection board shall be put in writing, furnished to each member, and made a part of the board record. An audio or video recording is an acceptable means of communication with the board, so long as a written transcript is made a part of the board record.

3. Unsolicited Information Or Opinion Regarding Particular Officers

a. Favorable Information Or Opinion. A Service Secretary may not provide favorable information or personal opinion to the selection board regarding officers to be considered by that board, except information provided either:

(1) By means of a letter filed in each officer's official military records under regulations prescribed by the Secretary concerned, or

(2) As a part of the written guidance and instructions provided to the board under subsection G.2., above.

Any such statement should contain an appropriate caution that it is not intended to restrict the exercise of the board's discretion. Under regulations to be prescribed by the Secretary concerned, other persons may provide in writing unsolicited favorable information or opinion regarding particular officers for the consideration of a selection board. Each officer concerned shall be notified of the contents of any statements to be furnished to a selection board under this paragraph, and such statement will not be provided if the officer concerned objects. Under regulations to be prescribed by the Secretary concerned, officers under consideration for promotion may furnish information to a selection board as authorized under Section 614 (b) of reference (b).

b. Unfavorable Information Or Opinion. No person may furnish unsolicited unfavorable information or opinion regarding officers to be considered by a selection board except as expressly authorized under regulations prescribed by the Secretary concerned.

c. No person may direct that a particular individual be selected by a selection board or that a selection board fail to select a particular individual.

4. Information Requested By A Selection Board. Under regulations to be prescribed by the Secretary concerned, a selection board may be authorized to request information during its deliberations to amplify or clarify the official records provided to the selection board. Such regulations must ensure that a selection board does not thereby consider information that could not otherwise be made part of the official records of officers concerned under Service regulations without notice to each officer and opportunity to comment.

5. Skill Guidance. The Secretary concerned may prescribe the minimum number of selections required to meet the needs of the Service concerned for officers having particular skills. However, a maximum number of selections may only be prescribed for a competitive category.

H. BOARD PROCEEDINGS

1. Board President. The senior member of a selection board may be appointed president of the board and may perform such administrative duties in connection with the board proceedings as the Secretary concerned may prescribe. A board president has no authority to determine any matter that would constrain the board from recommending for promotion those officers best qualified to meet the needs of the Service concerned as specified by the Secretary.

2. Participation of Board Members. Any board member who believes that he or she cannot in good conscience perform his or her duties as a member of the board without prejudice or partiality has a duty to request relief by the Service Secretary from such duty. Such a request will be honored. Any board member who believes that the integrity of the board's proceedings has been adversely affected by improper influence of superior military or civilian authority, misconduct of the board president or a member, or any other reason, has a duty to request relief from his or her obligation under 10 U.S.C. 618(e) (reference (b)) from the Secretary concerned or the Secretary of Defense, and, upon receiving it, to report the basis for his or her belief to that authority.

3. Each member of a selection board shall be provided a copy of subsections H.1. and 2., above, prior to each period of duty as a board member.

I. DEFENSE OFFICER PROMOTION PROGRAM OBJECTIVES AND REPORTING PROCEDURES

1. Objectives

a. While the process of promoting to fill requirements in the grades below by competitive category may result in different promotion timing and opportunity for certain competitive categories, promotion opportunity within a category shall be relatively similar over a period of 5 years. Promotion of officers under the following promotion timing and minimum opportunity is generally desirable:

TO GRADE	TIMING[1]	OPPORTUNITY
04	10 years ± 1 year	80 percent
05	16 years ± 1 year	70 percent
06	22 years ± 1 year	50 percent

[1] Years of active commissioned service plus all entry grade credit.

b. It is recognized, however, that promotion opportunity and timing, as determined by the Secretary of the Military Department concerned, may vary from these targets in promotion categories based on needs.

c. The number of officers that may be recommended for promotion to the grades of colonel or captain (in the Navy) and below from among those being considered from below the promotion zone in any competitive category may not exceed a number equal to 10 percent of the maximum number of officers to be recommended for promotion in such competitive category. If the Secretary of the Military Department concerned determines that the needs of the Military Service concerned require additional recommendations from below the promotion zone, he or she may, with the permission of the Secretary of Defense, provide for the recommendation of a greater number. In this case, the number of officers recommended may not exceed 15 percent of the total number of officers that the selection board is authorized to recommend for promotion. For promotion to the grades of brigadier general or rear admiral (lower half) and higher, the Secretaries of the Military Departments are authorized to establish a maximum below-the-zone selection rate of 15 percent, to be computed in accordance with 10 U.S.C. 616 (reference (b)).

2. Format for Report

a. Overview

(1) This part of the DOPR serves as an introduction and as a brief overview of commissioned officer promotion policy and its relationship to projected commissioned officer requirements of the Military Department concerned. The various competitive categories established by the Secretary of the Military Department concerned shall be identified and described.

(2) This part also shall contain brief comments on the promotion opportunity and timing for each competitive category in the Military Department concerned in comparison to the objectives in subsection I.1., above.

b. Statistics. This part shall contain the commissioned officer selection and promotion statistics in the format prescribed in enclosure 3.

3. Procedures

a. All material in the DOPR shall be unclassified.

b. An original and six copies shall be submitted to the ASD(FM&P), Room 2B265, the Pentagon.

J. INFORMATION REQUIREMENTS

The "Defense Officer Promotion Report" is assigned Report Control Symbol DD-FM&P(A) 1621 under DoD Directive 7750.5 (reference (c)).

K. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

William H. Taft
William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 3
1. Extracts from Authorities Applicable to the Defense Officer Promotion Report
2. Definitions
3. Commissioned Officer Selection and Promotion Statistics

EXTRACTS FROM AUTHORITIES APPLICABLE TO THE DEFENSE OFFICER PROMOTION REPORT

1. 10 U.S.C. 621 (reference (b))

"Under regulations prescribed by the Secretary of Defense, the Secretary of each Military Department shall establish competitive categories for promotion. Each officer whose name appears on an active-duty list shall be carried in a competitive category of officers. Officers in the same competitive category shall compete among themselves for promotion."

2. 10 U.S.C. 622 (reference (b))

"Before convening a selection board under 611(a) of this title for any grade and competitive category, the Secretary of the Military Department concerned, under regulations prescribed by the Secretary of Defense, shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, and (3) the number of officers authorized by the Secretary of the Military Department concerned to serve on active duty in the grade and competitive category under consideration. Based on such determinations, the Secretary of the Military Department concerned shall determine the maximum number of officers in such competitive category which the selection board may recommend for promotion."

3. 10 U.S.C. 623 (reference (b))

"(a) Before convening a selection board under section 611(a) of this title to consider officers for promotion to any grade above first lieutenant or lieutenant (junior grade), the Secretary of the Military Department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) The Secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category. Such determination shall be made on the basis of an estimate of:

(1) the number of officers needed in that competitive category in the next higher grade in each of the next five years;

(2) the number of officers to be serving in that competitive category in the next higher grade in each of the next five years;

(3) in the case of a promotion zone for officers to be promoted to a grade to which section 523 of this title is applicable, the number of officers authorized for such grade under such section to be on active duty on the last day of each of the next five fiscal years; and

(4) the number of officers that should be placed in that promotion zone in each of the next five years to provide to officers in those years relatively similar opportunity for promotion."

DEFINITIONS

1. Competitive Category. A separate promotion category established by the Secretary of a Military Department, under 10 U.S.C. 621 (reference (b)), for specific groups of officers whose specialized education, training, or experience, and often relatively narrow utilization, make separate career management desirable. (See enclosure 1.) New competitive categories may only be established as specified in DoD Directive 1320.9 (reference (d)).

2. Promotion Opportunity. The cumulative opportunity for selection for promotion of officers who have competed for promotion to the next higher grade. For purposes of the Defense Officer Promotion Program, it is calculated by taking the maximum number of recommendations that can be made by the selection board and dividing that number by the number of officers in the zone (exclude below- and above-zone eligibles).

3. Promotion Timing. The number of years of active commissioned service plus entry grade credit at which officers are promoted to a particular grade.

COMMISSIONED OFFICER SELECTION AND PROMOTION STATISTICS

FOR FY: ____________

COMPETITIVE CATEGORY: [1] ____________

PAY GRADE		IN THE PROMOTION ZONE			BELOW THE PROMOTION ZONE			ABOVE THE PROMOTION ZONE			PROMOTION TIMING [2] (YEARS-MONTHS) IN THE PROMOTION ZONE	# TWICE FAILED AND SELECTED FOR CONTINUATION FROM ABOVE THE PROMOTION ZONE		
FROM	TO	# SEL[3]	# CONS[4]	% SEL[5]	# SEL[3]	# CONS[4]	% SEL[5]	# SEL[3]	# CONS[4]	% SEL[5]		# SEL	# CONS	% SEL
0-5	0-6													
0-4	0-5													
0-3	0-4													
0-2	0-3													

[1] To be completed for each competitive category. Show data for selection boards convened during the last fiscal year.

[2] For competitive categories not authorized constructive service credit, show the 12-month average of the total active federal commissioned service of the last due-course officer promoted during each month of the fiscal year. For competitive categories authorized constructive service credit, show the 12-month average of the total active commissioned service plus constructive service credit of the last "typical" officer promoted during each month of the fiscal year.

[3] Show the number selected for promotion.

[4] Show the number considered for promotion.

[5] The number selected divided by the number considered.

Senator **Glenn**. Dr. Armor, would you please tell us why DOD Directive 1320.12 was reissued and the role your office played in the reissue?

Dr. **Armor**. The reasons for reissuing it and, in fact, revising it quite significantly, were the issues that were raised by that O-8 board and by the Navy captains board.

Whatever the final positions were—and, of course, we did have our General Counsel issue an opinion on the legality of the board and what have you, but I don't want to go into that—the real question here is we want to make sure that the procedures work. We want to make sure that there is not improper influence because that certainly is not our intention or certainly anybody's intention, to have that happen.

Senator **Glenn**. What role did the Departments play in that, the individual military Departments?

Dr. **Armor**. The initial draft was formulated by the General Counsel's office, working with Chapman Cox and Mr. Taft. The involvement was at a very high level. And then the services reviewed the draft report following that initial development.

Basically, the purposes of the revisions were to make sure that we formalize the communications, if there are to be communications, that they are in writing, that they are proper, and that they can be reviewed as part of the process to make sure that they were proper.

Senator **Glenn**. You said there were other items under further study: the Secretary of Defense oversight role, review procedures, joint duty, and some other things, and the study group is continuing.

Do you know of any other modifications required as of this date?

Dr. **Armor**. I have listed the three basic areas that we are reviewing, you know, the delegation authority and our procedures.

One issue there that I might mention, which was not in my statement, is this. In terms of the delegation of authority, we feel that is an appropriate matter for review. What we want to make sure is that we are exercising the proper oversight for the Secretary, because he does have the final approval authority.

I might point out that this is a topic of discussion between our office and the services. Whatever our directives say, the Secretary of Defense does, in fact, have the final legal authority over all matters in the Department of Defense. So he cannot escape that responsibility, no matter what the directives may say.

But we have to make sure that our process works to review the results, and we have discussed the issue of publishing the list.

One of the differences procedurally that happens with the delegation of authority is that the list of the selection board results is published after the Secretary of the service approves it, prior to the final action of the Secretary of Defense. So we are taking a look at that procedure as well because, if the Secretary of Defense were to ever not approve a board, then, obviously, names would be on the street. So we want to avoid that.

Senator **Glenn**. Did your new directive make any substantial changes that apply to a particular service?

I guess the background to that would be did you find in considering this that there were substantial differences in promotion board policy from one service to another that you now have straightened out?

If so, what were those differences?

Dr. **Armor**. To my knowledge, the directive does not now make any distinctions between the services.

Senator **Glenn**. But were there substantial differences prior to this directive coming out?

Dr. **Armor**. Overall, I am not familiar with any specific service differences in the way it was done.

Clearly, there may be some differences in the communication with the board, and that may be unique to either a service or unique to a service Secretary or a service Chief. But we did not uncover any routine differences in the way the services work.

Now, they set their boards up differently. They have different size boards and different numbers of boards, and what have you.

But none of that detailed administrative aspects is covered by the new directive.

Senator **Glenn**. General Lukeman, would you comment on that.

Do you recall whether there were any major differences between the Air Force, Marine Corps, Navy, Army, that were straightened out by this, or does this just clarify what was pretty much standard across the services to begin with?

General **Lukeman**. The latter is true. There was not any attempt to correct anything or to change anything where there might have been administrative differences among the services.

Senator **Glenn**. Okay.

Dr. Armor, one of the changes in the reissued directive is a provision which says, and I quote: "The maximum number of promotions authorized within a competitive category may not be increased subsequent to the convening of a selection board without approval of the Secretary of Defense."

That addresses one of the problems that we found with the Marine Corps two star list, of course.

Since guidance to a promotion board referred to by some as a precept would prescribe the maximum number and is usually issued just before the convening of a board, can you give me any examples of when this authority to increase the maximum number would be needed and exercised?

This is a little bit along the line of Senator Wilson's comments.

Dr. **Armor**. I will let General Lukeman answer this.

Senator **Glenn**. Why would it need to be changed?

Dr. **Armor**. There is an administrative omission, if a record has been lost or your number determination process was inaccurate and you did not discover that until after the board met.

General **Lukeman**. An individual might decide to resign or retire right in the middle of the proceedings, and if it were critical to have a certain number, particularly if you are in a general or flag officer board, it might be highly desirable to add a number at that point.

Senator **Glenn**. If you had a person retire who was on the list, you would just substitute one more person up, wouldn't you? That wouldn't require a reissuance of the precept.

General **Lukeman**. That is entirely possible if it was someone on the list. It would not require a new precept.

I am trying to make a point of personnel differences that we are not aware of at the time the board precept was created, that become revealed during the process of the board proceedings.

Sickness is a possibility. A person might not be selected because it is known to the board members that he has a medical condition.

The Secretary may want to take that into consideration in rewriting the precept.

Senator GLENN. I don't think we are on the same frequency here.

If a person got sick, resigned, or whatever, that would not have anything to do with the number of people that the services require to perform that mission. If somebody drops off the list, then you elevate the next guy down up to that list, it would seem to me.

My question was why the number on the list would be changed. I don't want to put words into your mouth, but I would think the only time that would be was if the service had a new requirement laid on them, for a joint duty assignment or if there were a change in mission and they were assigned a new duty where they needed a new general officer of a rank to perform a new function, they would need it for the whole service.

General LUKEMAN. That is a possibility.

Senator GLENN. I would not anticipate that it would apply just because someone got sick or retired.

General LUKEMAN. I agree. A new number would not be required under those circumstances.

Probably an error would be more to the point. When you are determining the number of people that you want to select, you look at your promotion needs over a period of time, and if that were computed erroneously and discovered during the period of time that the board was in session, you might want to add a number for that reason.

Senator GLENN. Are either of you aware of any instance, other than that Marine Corps two star list that we referred to, where a convening authority either felt the need to increase or actually did increase the maximum number after the board had already convened?

Dr. ARMOR. I am not aware of one.

General LUKEMAN. I am aware of at least one other circumstance in a Marine Corps officer board within the last 6 or 7 years.

Senator GLENN. Can you give us information on that? Can you supply that for the record, just so that we have it as part of this record?

General LUKEMAN. Yes, sir. We will supply it for the record.

Senator GLENN. Fine.

[The information follows:]

OTHER BOARDS IN WHICH THE CONVENING AUTHORITY INCREASED NUMBERS

1. A Marine Corps colonel board convened on February 5, 1985. While in session, the Commandant of the Marine Corps requested and the Secretary of the Navy approved an increase in the number of officers to be selected from 113 to 116 to accommodate the need for additional judge advocates.

2. A Navy captain board was convened on February 7, 1983. Subsequent guidance was received from the Secretary of the Navy to increase the selection opportunity from 60 percent to 61.3 percent to provide for six additional selections of Naval Flight Officers.

3. A Navy rear admiral (lower half) board was convened on November 5, 1984. Subsequent guidance was received from the Secretary of the Navy to increase the number of selections from 28 to 30 based on the need for female flag officers and additional flag officers with aviation experience.

4. A Navy rear admiral (lower half) board was convened on October 27, 1986. Subsequent guidance was received from the Secretary of the Navy to increase the number of selections from 28 to 29 based on the reallocation of additional promoted flag officer numbers to the Navy by the Deputy Secretary of Defense.

Dr. ARMOR. Sir, could I add a point?

Senator GLENN. Yes.

Dr. ARMOR. If we get into this issue of skill guidance—and this will probably come up in your later questions—which is a little bit different than the categories——

Senator GLENN. Yes.

Dr. ARMOR [continuing]. I think we may be in a general area, if we go in that direction, that the directions will be a little bit more complicated to a board than they are at the present time.

I could anticipate a situation where the complexity of addressing not only maximum for categories but maybe minimum and maximum for skill areas having a result that nobody really intended because it is hard to foresee the impact.

Now, I am not saying that we are going to do that. I am saying that we want to review that whole area because of the relationship between the balance of needs of the service and the need to promote the best qualified.

If we go in that direction, there may be even more substantial reasons for some flexibility on this, provided that the purpose is proper.

I just wanted to raise this as a future need for that flexibility which may arise.

Senator GLENN. It is my understanding that, despite the claim for the need to increase the maximum number by two in the case of the Marine Corps two star list, Marine Corps planners subsequently indicated that there was no analytic basis for the addition and they did not change their plans one bit.

Is that correct? Is that your understanding also?

Dr. ARMOR. I am not familiar with that particular plan.

Senator GLENN. Are you, General Lukeman?

General LUKEMAN. I cannot give you a complete answer.

I do not believe that the requirement for general officers changed between the time that it was 8 and the time that it was 10.

Senator GLENN. What effect would a prohibition on the changing of the maximum number of promotions authorized within a competitive category subsequent to the convening of a board have on the DOD promotion process?

Dr. ARMOR. Well, if, in fact, an error had been made and it were not discovered—when I say "error," I mean the number was wrong, it was either a typographical error or the analytic process whereby one got there was discovered to be incorrect—and you did not correct it, and the law was to the point where it was written in law and you were stuck with it, then obviously the board would be forced to apply a maximum that would be adverse to the service.

Senator GLENN. Okay.

The current directive provides an escape hatch so that that does not happen.

Dr. **Armor**. That's correct—as long as the Secretary of Defense can approve it.

Senator **Glenn**. Senator McCain, are you ready with your questions?

Senator **McCain**. Thank you, Mr. Chairman, and thank you for bringing this hearing and possible legislation about. Clearly there has been a problem. Perhaps it has only been confined to one Secretary and perhaps to a couple of incidents. But I know that the chairman appreciates, as I do, the enormous impact on morale of the men and women of the armed services if there is any real or perceived tampering with the promotion system.

My information is that the instance that took place, both the O-6 selection board and the general selection board, had repercussions throughout at least the Naval service. Some problems were brought to light that I think need to be addressed.

The disappointing part about it to me is that for many, many years, with rare exceptions, we have had a credible and, indeed, laudatory system of promotion, perhaps one of the finest, and I am sorry that these incidents came about. They brought so much into question the integrity of a lot of very decent people.

Dr. Armor, I appreciate your statement, and also would like to clarify a few points that I don't think are presently clear in section 618 of Title X.

The first question I would ask you is this.

As a result of a case last year, it was determined by the General Counsel of DOD that a service Secretary does not have the authority to direct a maximum number of selected officers with particular skills within a competitive category because that would violate the statutory guidance that selection boards must select those officers which it believes are "best qualified for promotion to the next higher grade."

If you presume that is the status of the law, do you believe that a service Secretary should have that authority without having to create a separate competitive category for officers having those particular skills?

Dr. **Armor**. That is an excellent question, and I don't think I am ready to answer yes or no to it right now, except to state that that is one of the things that the group we have formed, which General Lukeman has formed, is going to review.

The law now acknowledges and, in fact, explicitly, that a board, a selection board, should balance the needs of the service for particular skills against promoting the best qualified.

I think the question is whether we need more acknowledgement of formalizing that process in the precept. It is given informally at the present time, even though it is not in the law or our directives. The precept does include information that we need one or two of these folks, or whatever. It is generally reserved in those areas to make sure that certain specialists in the intelligence area or maintenance are available for force management purposes.

I guess the broader question, though, is not just minimum guidance in special circumstances, but, you know, should we be able to tell a board to select the maximum, let's say, of surface warfare officers or aviators and so on, in order to solve some let's say short-term force management needs, or even long-term, without going through the enormous difficulty of creating a competitive category.

It is interesting that the Navy, over time, has created many more competitive categories than the other services, and generally those are reserved in the other services for medical, attorneys, and so on.

I think, however, it would be unfortunate for all the services to start creating competitive categories on that basis and having to manage on that basis, when they have a short-term need to influence the number of officers in a particular area, simply because the threat has changed or the current requirements have changed for particular kinds of operations.

So, I guess my feeling is that it would be nice to have that flexibility. On the other hand we have to balance that against the potential abuse of maxima and minima.

I think the concern of this committee, and ours also, is that we don't want the precept or skill guidance to offer even more of an opportunity for any mischief. So, basically, that is the balance we have to consider, and that is what we are asking the working group to take a look at.

Senator McCain. Dr. Armor, if you believe that the service Secretaries need that kind of flexibility—and I agree with you; I think a case can be made that perhaps they do need that because they have to be responsible for the long-term needs of the service. I think an example of that would be when we saw a dramatically increasing SLBM force from a very small cadre of submarine officers, and we had to have those people promoted so that they would be able to command the ships that would be coming on-line as they are now.

If my memory serves me correctly, specific guidance was given to selection board in those days, to give them a certain promotion opportunity, so that we would have a pool of qualified nuclear submarine officers. I am sure that other cases can be cited.

If that is indeed the case, do you think that the law has to be changed to reflect that requirement for flexibility, or do you think the present law is sufficiently clear on that issue?

Dr. Armor. I am not an attorney and I would hesitate to give a final legal opinion. But the way the law reads now, it talks about the board considering the balance between skills, the need for certain skills, and promoting the best qualified. To implement that in a directive fashion would seem to me to be quite appropriate now. There is a maximum competitive category, but there is no mention in the law made of skill, except in the section that says that a board should consider it.

So if the Secretary wants to formalize it by giving specific numbers, or maxima and minima guidelines, pluses or minuses, and so on, or plus or minus some percent, then I would think that the law would not prohibit that. But, of course, we prefer that to be done in directive form because, once we put these things into law, of course, then they can have unintended consequences and make it that you just have to come back and change the law if it is not working out properly.

We would rather work with you and come up with some agreements. We would be happy to review any of the changes that we want to recommend with you before doing that.

That would be certainly probably a more efficient way of handling it.

Senator **McCain**. It is my understanding that the DOD General Counsel last year said that the law did not permit that flexibility on the part of the Secretary of the Navy. Do you remember that?

Dr. **Armor**. I am aware of that. In fact, our directive restricts you and says that you cannot specify a maximum. But that is his interpretation.

If we need to change the law on that, then we should change the law.

Senator **McCain**. How about getting together with your legal counsel and finding out whether they feel that there is sufficient ambiguity that we have to specify it in law, or would there be sufficient DOD directives to clarify the situation.

Dr. **Armor**. We will.

In fact, the General Counsel is on the working group, and if that is their final opinion, whatever we end up coming out with—first of all, we may not end up with a maximum. We may end up more with a guideline. I don't know where the group is going to come out.

But if we need legislation, we will certainly come back to you with that.

Senator **McCain**. I am interested in the issue of the authority which the President has delegated to the Secretary of Defense concerning the power to "modify" reports of selection boards.

Can you give us any example of a lawful modification of a report, except the removal of a name from a report, a power of the President which cannot be delegated?

Do you see my point?

If the President has the power to modify the report, what modifications might those be?

Dr. **Armor**. We didn't write the law, of course, so I don't know. I think that is a very good question.

The word "modify," we have talked about it amongst ourselves. It is not clear.

You cannot add a name, and since there is already provision for removing a name in various ways, I don't know what "modification" would mean.

Senator **McCain**. I would hope that your working group would also come up with some recommendations so that we can clarify that aspect of this issue.

Dr. **Armor**. We will address that, too.

Senator **McCain**. I am certainly confused on that issue, as it appears that you are, too.

Do you believe that a Secretary of one of the services should have the authority to recommend a specific name to a selection board?

Dr. **Armor**. No, I do not.

Senator **McCain**. You do not?

Dr. **Armor**. That is not permitted by our directives.

We are not reviewing that one.

Senator **McCain**. Do you believe that the Secretary has the authority to recommend in writing the specific name of an officer for promotion under your regulations?

Dr. **Armor**. I don't know if it is clear.

General **Lukeman**. I don't know if it is clear, but it is certainly not the intent that it should be permitted.

Senator **Glenn**. What was your answer? I didn't hear you.

General **Lukeman**. It is certainly not the intent that it should be permitted.

Senator **McCain**. Some reading of the regulation indicates that perhaps he has that authority. Let me argue this from the Secretary's side here. He sees a person who has the unique qualification necessary to fulfill a certain billet—the Senate of the United States decided that in the case of Admiral Rickover, when they sent back the selection promotion list three times until his name was on it.

I am not asking you should a service Secretary be allowed to bind a service board, but should a Secretary of a service be allowed to recommend a certain individual? If not, couldn't the Secretary, in rebuttal, say look, I am responsible for this service. Don't I have the right to recommend an individual that I think is crucial to the needs of the service from my view—but not ordering that board to select him, but only recommending him.

General **Lukeman**. In my opinion, he should not be permitted to make that recommendation. It would be perceived as being guidance, even though it might not be intended to be such, and the board process has to preempt the politicized process of a single Secretary or service Chief appearing to recommend one individual.

Senator **McCain**. Mr. Chairman, I hope I am not exceeding my time here. If I am, please cut me off.

Senator **Glenn**. No, no. Go ahead. Those are good questions.

Senator **McCain**. Let's look at 3(g) of your own regulations, if you would. I don't know if you have them in front of you.

Dr. **Armor**. Yes, I have them in front of me.

Senator **McCain**. "Unsolicited information or opinion regarding particular officers: (a) Favorable information or opinion: a service Secretary may not provide favorable information or personal opinion to the selection board regarding officers to be considered by that board, except information provided either by means of a letter filed in its officer's official military records, or as part of the written guidance and instructions provided to the board under subsection (g)(2) above."

The way I read that, this regulation does give the service Secretary the authority to do that as part of written guidance and instruction provided to the board.

Dr. **Armor**. But I kind of read your question as saying can a service Secretary ask that board to appoint or promote a particular officer.

No, I am not interpreting favorable information or information of any kind to be naming an officer. It is certainly not our intention that that be the case, but not to restrict any information to come to the board, as long as it is in writing, and it can be reviewed by all parties, and it is made clear that this, in no way, need influence the board.

Senator **Glenn**. John, would you yield for a second?

Senator McCain. Yes, Mr. Chairman.

Senator Glenn. This is a good line of questioning and I was just thinking of individuals. Admiral Rickover was one; General Abrahamson is another. They had a particular expertise that the military services, everybody agreed, wanted to apply in a certain area.

Do we have a proposal now that would permit a person like that, singled out by his service, to be recommended—to the Secretary of Defense for a separate promotion that would not go by a board? Do we have any proposal that would do something like that, and then to be sent on for approval by the Congress?

General Abrahamson, for instance, was brought up quite separately to the Congress, for separate consideration.

The reason I think this is a good line of questioning is because the military is going to such specialized areas and big commands in very, very tightly focused specialized areas—in either research, or air, or weapons development of one kind or other, or submarines, as John mentioned—it would seem to me that there should be some procedure that permits that.

I am not sure that it should be through the board specifically. But you are going to have certain officers developing a certain expertise, and you will want to make use of that expertise. And he may not be the most popular person for promotion with the board, necessarily, much like Admiral Rickover. He would not have passed muster with three boards, probably. But, nevertheless, his expertise was recognized. He was kept on, rightly or wrongly—and I know that, is debatable. But I think the question is a good one.

Is there a procedure now that would permit what Senator McCain is talking about?

Dr. Armor. I found the section I was looking for. It is under 3(g)(C): "No person may direct that a particular individual be selected by a selection board or that a selection board fail to select a particular individual."

Now, this was added during the process of——

Senator McCain. If I could interrupt—exactly, "no person may direct."

I am asking whether there is a recommendation that can be made or not by the Secretary, not whether it can be directed.

Dr. Armor. Okay. Now we are getting it narrowed down.

There is nothing in here that I can see in our directive that would prohibit a recommendation favorable to an individual, as long as that individual approved.

Senator McCain. Thank you. That was what I was trying to get at.

Dr. Armor. But I think we are really talking about two different things. That would not bind the board to select that person, and I think Senator Glenn is raising the issue of well, what if the Secretary wanted a particular person, regardless of what the board said.

Our regulations do not permit that. But I gather that is not what you meant.

Senator Glenn. Fred Pang, professional staff member on the subcommittee, has just reminded me of article II, section 2, of the Constitution, which says that the President can make such appointments as he sees fit to make. Maybe if there is someone that specialized, like Admiral Rickover, General Abrahamson, or whomever, and he is recommended from that service to the Secretary of Defense to the President, and it gets submitted to us, maybe we have an escape hatch in there after all.

Senator McCAIN. I agree with that, Mr. Chairman.

Indeed, the President obviously could make Senator Glenn a five star general, which we would all support.

Senator GLENN. And I'm available. [General laughter.]

Senator McCAIN. But I think to elevate a promotion of a much needed individual because of his degree of expertise in a certain area to where you would have to go to the White House each time for that kind of selection is, I think, hopefully not only not necessary, but, second, that person, if he is selected by the President and not by a selection board, obviously would be a very famous man or woman. I am not sure if that would be so desirable for that officer.

I think we at least have gotten a good opinion here from you that the Secretary, the service Secretary, can recommend an individual, and not direct.

I think maybe General Lukeman has a different view.

General LUKEMAN. I do.

I don't want to be overly influential to the working group people who will be responsible to me on this, but, nevertheless, I think we need to look at that very carefully.

In the first place, usually, I would think, this would be a three star or a four star position, so there is an appointment process here.

Senator McCAIN. You are talking about board positions now?

Dr. ARMOR. Board only.

General LUKEMAN. And so, when we are talking about a board process, the importance of the integrity of that process is paramount, and I would recommend looking very carefully at the way our regulations are written right now, with the view toward not permitting a service Secretary to make such a recommendation.

Senator GLENN. You would recommend what, then, that we keep it out and make it from the service Secretary to the Secretary of Defense for his recommendation?

General LUKEMAN. Outside the board process.

Senator GLENN. Outside the board process for individuals?

General LUKEMAN. Yes, sir.

Senator GLENN. I think that probably would work as long as it was not abused. But we would not want to see a Secretary coming up with all sorts of lists of people for separate promotion. That would be the danger there.

Senator McCAIN. I would say that that is perhaps more dangerous than just the recommendation of an individual and letting the board decide whether that person is qualified.

But I guess this is why you have your committee set up. I hope that you will report out soon.

I am often reminded of the plaque that I saw on the wall of the chairman of the board of RAND Corp. It said that the Lord so loved the world that he didn't send a committee.

But I hope you will come up with these recommendations, and keep the chairman and those of us who are interested, informed, and as soon as possible.

To some, this is a bit mundane, when compared with multibillion dollar budgets and programs and stuff like that. But I think we are talking about the morale of the services.

Dr. ARMOR. I assure you that we take it very seriously.

General LUKEMAN. Mr. Chairman, may I add to something that I mentioned earlier?

Senator GLENN. Of course, go right ahead.

General LUKEMAN. On the sickness and retirement thing, what I should have said was "in the next grade."

If we are trying to promote people, for example, from brigadier general to major general, and you have three or four unexpected retirements of major generals, you now have a greater requirement than you had before. That is the kind of circumstance that I was anticipating. In the middle of the board process, you may want to select 8 or 10, instead of six or seven, because of the retirements in the senior grade to which you are promoting.

Senator MCCAIN. Thank you very much, Mr. Chairman.

Senator GLENN. Thank you, John.

Oh, I see there. You mean that there have been new vacancies required uphill.

Dr. ARMOR. Higher up.

General LUKEMAN. Right.

Senator GLENN. Fine. Now I understand you. I did not understand you before. I am glad you clarified that.

General LUKEMAN. I did not express myself clearly there.

Senator GLENN. Dr. Armor, in December, 1982, the President issued Executive Order 12396, which delegated certain functions concerning appointment, promotion, and retirement to the Secretary of Defense.

In January, 1983, the Secretary of Defense redelegated a number of authorities to the service Secretaries.

Without objection, I will enter both of those documents into the record at this time.

[The information referred to follows:]

THE SECRETARY OF DEFENSE,
Washington, DC, January 21, 1983.

Memorandum for the Secretaries of the Military Departments.
Subject: Public Release of General and Flag Officer Selectees.

On 12 January 1983, I redelegated to you certain authorities under Executive Order No. 12396. Among the redelegations was the authority to approve selection board reports. However, I do not think it is a good idea for you to release the names of those flag and general officers I am to recommend to the President until he has acted on the list.

Therefore, public release of general and flag officer selections that you approve should not be issued until after the President has formally nominated the selected officers to the Senate for confirmation.

CASPAR W. WEINBERGER.

THE SECRETARY OF DEFENSE,
Washington, DC, January 12, 1983.

Memorandum for Secretaries of the Military Departments.
Subject: Redelegation of Authority Under Executive Order No. 12396, dated December 9, 1982.

I hereby redelegate to the Secretaries of the Military Departments the authority to approve selection board reports under section 1(a) of Executive Order No. 12396. However, the authority under section 1(a) to disapprove or modify selection board reports is not redelegated. I also redelegate to the Secretaries of the Military Departments the authority under section 1(b) to remove the name of an officer from a promotion list to any grade below commodore or brigadier general. The authorities in section 1(a) and 1(b) may not be further delegated.

The authority in 1(c) is also delegated to the Secretaries of the Military Departments who may redelegate the authority to subordinates appointed to their office by the President by and with the advice and consent of the Senate.

The authorities in sections 1(d) and 1(e) are redelegated to the Secretary of the Navy and the authority in section 1(f) is redelegated to the Secretaries of the Army and Air Force. These authorities may be redelegated to subordinates appointed to their office by the President by and with the advice and consent of the Senate.

CASPAR W. WEINBERGER.

Attachment.

THE WHITE HOUSE

(Office of the Press Secretary)

[Executive Order 12396]

DEFENSE OFFICER PERSONNEL MANAGEMENT

By the authority vested in me as President of the United States of America by Section 301 of Title 3 of the United States Code, and in order to delegate certain functions concerning the appointment, promotion, and retirement of commissioned officers of the Armed Forces, it is hereby ordered as follows:

Section 1. The Secretary of Defense is designated to perform, without approval, ratification, or other action by the President, the following functions vested in the President:

(a) The authority vested in the President by Sections 618(b)(1) and 628(d)(1) of Title 10 of the United States Code, to approve, modify, or disapprove the report of a selection board.

(b) The authority vested in the President by Section 629(a) of Title 10 of the United States Code, to remove the name of any officer from a promotion list to any grade below commodore or brigadier general.

(c) The authority vested in the President by Section 624(c) of Title 10 of the United States Code, to appoint officers in the grades of first lieutenant and captain in the Army, Air Force, and Marine Corps or in the grades of lieutenant (junior grade) and lieutenant in the Navy.

(d) The authority vested in the President by Section 5721(c) of Title 10 of the United States Code, to make certain temporary appointments to the grade of lieutenant commander.

(e) The authority vested in the President by Section 6323(a) of Title 10 of the United States Code, to approve the application of an officer of the Navy or the Marine Corps for retirement after the completion of more than 20 years of active service and to designate the month in which such retirements shall become effective.

(f) The authority vested in the President by Sections 3918 and 8918 of Title 10 of the United States Code, to approve the request of a regular commissioned officer of the Army or the Air Force to retire after at least 30 years of service.

(g) Nothing in this Section shall be deemed to delegate the authority vested in the President by Section 618(c) of Title 10 to remove a name from a selection board report.

Sec. 2. (a) The Secretary of Defense is designated to perform during a time of war or national emergency the following functions vested in the President, without the approval, ratification, or other action by the President.

(1) The authority vested in the President by Section 526 of Title 10 of the United States Code, to suspend the operation of any provision of Sections 523, 524, or 525 of

Title 10 of the United States Code, relating to the authorized strength of commissioned officers.

(2) The authority vested in the President by subsections (a) and (b) of Section 603 of Title 10 of the United States Code, to make or vacate certain temporary commissioned appointments.

(3) The authority vested in the President by Section 644 of Title 10 of the United States Code, to suspend the operation of any law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, or Marine Corps.

(b) The authority delegated to the Secretary of Defense by this Section may not be exercised during the time of a national emergency declared by the President, unless the exercise of any such authority is specifically directed by the President in accordance with Section 301 of the National Emergencies Act (50 U.S.C. 1631).

(c) The Secretary of Defense shall ensure that actions taken pursuant to the authority delegated by this Section are accounted for as required by Section 401 of the National Emergencies Act (50 U.S.C. 1641).

Sec. 3. The authority delegated to the Secretary of Defense by this Order may be redelegated to the Deputy Secretary of Defense, any of the Assistant Secretaries of Defense, and to any of the Secretaries of the military departments who may further subdelegate such authority to subordinates who are appointed to their office by the President with the advice and consent of the Senate.

Sec. 4. All actions taken by, for, or on behalf of the President with respect to the functions delegated by this Order, which actions would be valid if taken pursuant to this Order, are ratified.

Sec. 5. (a) Executive Order No. 10621, as amended, is further amended by revoking subsections (g), (h), (j), (k), (l), (m), and (n) of Section 1 thereof.

(b) Executive Order No. 11390, as amended, is further amended by revoking subsections 2, 3, 9, 12, and 15 of Section 1 thereof.

(c) Executive Order No. 12239 is revoked.

RONALD REAGAN.

THE WHITE HOUSE, *December 9, 1982.*

Senator **GLENN**. One of the authorities that was delegated by the President to the Secretary of Defense was the authority to approve, modify, or disapprove reports of a selection board.

The Secretary of Defense redelegated a portion of this responsibility, namely, the authority to approve reports of a selection board to the service Secretaries.

The Secretary of Defense remained the authority to modify and disapprove selection board reports.

Before the executive order was issued, I assume the President approved, modified, or disapproved selection board reports.

Would you describe how this was done and the role of your office in the process?

Dr. **ARMOR**. The delegation in 1983—how it was done before? I'm sorry. I may have misunderstood your question.

Senator **GLENN**. Before that executive order was issued, it delegated to the Secretary of Defense, and then that could be redesignated down to the service Secretaries, that was all changed.

Dr. **ARMOR**. Yes, in 1983. I do not believe that I know how our office specifically handled that before 1983, before that delegation took place. I am not sure.

General **LUKEMAN**. I don't have a history on that, sir.

Senator **GLENN**. Maybe you could supply that for the record and we will include it in the record.

Dr. **ARMOR**. I will provide that for you, sir.

[The information follows:]

SELECTION BOARD PROCEDURES PRIOR TO 1983

Prior to the delegation of the Presidential authority for approval of selection boards to the service Secretaries in 1983, the selection board results were forwarded to the Office of the Secretary of Defense (OSD). The OSD staff reviewed the selection board results to determine if, based on the information provided, the selection board complied with existing law, prescribed procedures, and the policies of the Department. The selection board results were then forwarded to the Secretary of Defense for transmittal to the President. Upon receipt of Presidential approval, the White House staff advised OSD who then relayed the information to the appropriate service that public release of the board results was permitted.

Senator GLENN. Why did the Secretary of Defense delegate only the approval portion of this authority to the service Secretaries?

Dr. ARMOR. I think the logic here was just consistent with the fact that the service Secretary, if you look at the law, really controls the process of the appointment of the board, of the determination of the numbers, the analysis of requirements, the writing of the precept.

I might say, if we get into the skill guidance area, I think we are going to actually expand that activity of the service Secretary in the future. But I think it seemed logical to the people we have talked to in terms of the delegation and why, that the service Secretary be the first line of approval because the service Secretary is in the best position to evaluate whether, in fact, the precept was followed.

You will note that the law says that the service Secretary can return the board if he feels there is a violation of law or regulation, and the service Secretary then is the first line of evaluation, not only of the DOD regulations, but also of service regulations that govern how the board works.

It certainly seems logical to me that the service Secretary is the first line of approval.

I also want to say—and I said this in my statement, but it is very important—that the fact that our internal process do this sort of delegation—it is partly a formality. The Secretary of Defense cannot delegate his ultimate authority for all matters in the Department of Defense. I think it becomes an administrative process, more than a fundamental legal change, because of other laws.

I can assure you that it has come up before in our office, because there are times when older statutes are written that say the Secretary of the military department "shall," and then there is no mention anywhere else that the Secretary of Defense has that same authority.

Time after time, when this has come up—and then it is sometimes used by the services to say we have the authority to do this. I might mention our recent study of women in combat, the issue of who makes the final determination of that decisionmaking process. Our General Counsel, he or she, has said repeatedly in the past, the Secretary of Defense has the final authority for all policies and decisionmaking in the Department.

So I think it is worth saying that because we may do certain things administratively, but that does not necessarily mean that we have changed the fundamental nature of the law, because we cannot ever delegate the Secretary of Defense's final authority in anything.

Senator GLENN. Okay.

Pat Tucker, counsel for the minority has a comment.

Go ahead, Pat.

Mr. **Tucker**. Dr. Armor, my concern from a legal point of view on this issue is that you are not delegating the general power of the Secretary here. What, in fact, has been delegated is the President's specific statutory authority.

When the service Secretary approves the report, as a matter of law, the President has approved that report, since it is the President's authority that is being exercised.

I don't know how the Secretary of Defense can overrule the President's authority.

Dr. **Armor**. The delegation of authority—again, we are getting into legal matters, and I am not an attorney, and we have a General Counsel who will work on the working group. But there is nothing unusual about the delegation of authority or parts of authority to the services.

If you are saying why you have delegated one part of an authority and not another, or if you are saying can the Secretary of Defense redelegate something that the President has delegated to him, well, we certainly do it in a lot of areas, and, if that is illegal, we probably have to look at a stack of DOD regulations a mile high.

In the redelegation process, for example, it is common that, unless the law says you cannot redelegate an authority—my office, the Assistant Secretary, has many, many redelegated authorities that have been done by DOD regulation, to make decisions. Unless the law says may only be delegated down to Deputy Secretary or whatever, that is a very common practice, to my knowledge.

Senator **Glenn**. In every department of Government, too, not just Defense.

Dr. **Armor**. Yes, not just Defense.

Mr. **Tucker**. If I could follow up for just a second, this is not a question involving the general authority to delegate unless prohibited. I recognize that.

But in this case, what has been developed is the final authority. In fact, under the law, when the President approves the report, there is only one thing that can happen to it, and that is transmittal to the Senate.

When the service Secretary signs for the President, I can find no authority for anyone else to review or act on the report.

Senator **Glenn**. But that is not what you just said. Key: he signs for the President. He is still acting as a line agent.

Dr. **Armor**. I assure you that those lists come to the Secretary of Defense for his action. I don't see how you can say that the service Secretary has final authority when the Secretary of Defense can disapprove the list, and, in fact, when the Secretary of Defense must resolve a disagreement between the Chairman of the JCS and the service Secretary if there is a dispute about joint requirements.

So, in two different ways, aside from the overall final authority of the Secretary under another title—I don't remember now—I would question the notion that it is a final approval.

Senator **Glenn**. Let me ask this then . . . are all selection board reports sent to your office for review so that the Secretary of Defense can effectively exercise his authority to modify or disapprove selection board reports, or do you merely rubber stamp the results of the board and send them over?

Dr. **Armor**. I will not disagree that there may have been a certain amount of rubber stamping in the distant past. But I can assure you that, since that directive has been written and since about this last summer, we have operationally asked and are reviewing all board reports for the promotion from O-5 to O-6, and up through O-8.

Senator **Glenn**. All of them are not sent to your office?

Dr. **Armor**. All of them are sent to our office.

Senator **Glenn**. Okay, all are sent to your office.

Dr. **Armor**. Well, we do not review the O-3 and O-4 board reports.

Now, we review other things for the O-5 promotion because there are joint requirement issues in the O-5 list.

But the board reports themselves are reviewed routinely. And we are going to change our directive. The directive says "periodic review," but we are going to change that so that it is, in fact, a requirement that our office review that board report.

That is not controversial, and we are doing that at the present time.

Senator **Glenn**. Mr. Tucker makes the point that the law says "on approval by the President" of the report of a selection board, the names of the officers recommended for promotion by the selection board may be disseminated to the armed force concerned. It says "on approval by the President."

I would presume from what you have said here, though, that you presume that that release authority has also been delegated by the President.

Dr. **Armor**. To the Secretary of Defense.

Senator **Glenn**. To the Secretary of Defense.

Dr. **Armor**. That's correct, and, in turn, to the service Secretary.

Now, I mentioned this before in my statement, so let me come back to it.

I think the publication of the list is a problem. I think it is a problem that we have to review in light of two things. First, we have significantly changed and increased the review process for the Secretary of Defense, our office, because of all of the additional instructions we now have in our directive.

So we have increased our review process.

Second, we have the title IV requirement that the Chairman has to review any board in which joint officers were reviewed.

So, for two different reasons now, there is a more intense review process.

We rarely expect to disapprove a board. We think the system works extremely well. But it has increased the possibility for that, and because of that, we will review the propriety of a list being published prior to the final decision of the Secretary of Defense.

Senator **Glenn**. Well, I have always presumed that this delegation of authority from the President, which is necessary in any department, has been redelegated too far downhill, and that is what happened and one of the reasons we are here this morning.

It would seem to me where we have seen problems like that, and this being the interpretation, that the President has delegated to the Secretary of Defense the authority to release the list, and could call it back at any time if he wanted to, of course, and that being the case, then it would be wise to take the individual services and make sure that their promotion boards are reviewed by your office, positively, no doubt about it.

Now, from what you said a little while ago, all these boards are what—about the O-4 level, is that what you said, General Lukeman?

General **Lukeman**. It's O-6, O-7, and O-8 only, sir.

Senator **Glenn**. Okay. Everything O-6 and up is reviewed by your office.

Dr. **Armor**. Intensely.

Senator **Glenn**. For approval.

Dr. **Armor**. Right.

Senator **Glenn**. And by your interpretation, you would be doing that in the name of the President——

Dr. **Armor**. Yes.

Senator **Glenn** [continuing]. As you do all the other things, of course.

Dr. **Armor**. And because of that, we are going to review the timing of the release of the list.

Now, the O-7 and above list cannot be released until the President has made approval. That is by law.

We are going to review the list released by the service Secretary for O-6 and lower boards until we have finished our review process.

The reason why release of the list is important is if you literally took it all the way to the President, we are talking about several months that it could take——

Senator **Glenn**. Yes, I understand that.

Dr. **Armor** [continuing]. And the list could be released, and so on. So it needs to be done shortly after the board meets.

Senator **Glenn**. If we want to tighten up the oversight within the Department of Defense, would we not have more effective oversight of the selection board reports if the approval authority were pulled back to Secretary of Defense level, rather than being passed on down to the service level?

Dr. **Armor**. I think that that is a change of words that does not change our responsibility to oversee the process and to enforce the regulations and the law.

As I said, the Secretary of Defense cannot delegate final approval of anything to anyone below him if he chooses not to approve it, and since in this case he has reserved the disapproval authority, it is clear in that case that the service Secretary does not make the final approval.

I do not see that it would have a major impact on the way we do our business, and I think we can live within that as long as we, in our directives, ensure a thorough review process.

Senator **Glenn**. Right now, though, can an individual service release the results of the board without you having given specific approval for him to release it?

Dr. **Armor**. That is correct.

Senator **Glenn**. That is what I am suggesting.

Maybe you should consider pulling this back to the Secretary of Defense level to make sure that we do not have a repeat of some of the incidents that have occurred.

Dr. **Armor**. That is what we are going to review.

Senator **Glenn**. You are going to review and make recommendations on that, then.

Dr. **Armor**. We'll make recommendations on the timing of the release of the list.

Senator **Glenn**. Is that one of the things being done now?

Dr. **Armor**. We are considering moving that back to the Secretary of Defense level, that is, it has to go through that process and finalized before release.

Senator **Glenn**. It cannot be released by the service until you have reviewed it. You could delegate the authority to release it, but it could not be released without your specific approval?

Dr. **Armor**. Until the Secretary of Defense has finished his process, yes, his review process.

Senator **Glenn**. Okay. I would think that would be a pretty good move.

Now, you may want to study it further. There may be reasons why you would not want to do that, but I would think that would be a wise move in view of what has happened.

Dr. **Armor**. I think it should be reviewed. We have a working group that we just formed a while back, and I would at least like to have their views on it.

Senator **Glenn**. There is a vote on now, and I will have to leave in a few minutes to cast my vote. I will leave when the next buzzers go off and will get back here as fast as I can.

The word "modify" in the authority that we are talking about appears to be ambiguous.

It seems to me that the President should have the authority to approve or disapprove selection board reports, but I am not certain why he needs the authority to modify.

Is the word "modify" an anachronism or something that we should be pulling out of there?

To your knowledge, has that authority to modify selection board reports ever been exercised?

Dr. **Armor**. We have not been able to think of an example, or we don't have any memory of an example. We can't even think of one, because you have the right to withdraw names.

Senator **Glenn**. Can you think of a situation where it might be needed or not needed, or when it would be exercised?

Dr. **Armor**. I think that is probably as good reason why the working group—I mean, there may be circumstances that others, with longer memories or experiences have, but we cannot think of one right now.

Senator **Glenn**. Maybe you would want to look at that and see whether we want to take the word "modify" out of there. Sometimes a single word can make a mighty big difference in something.

Dr. **Armor**. It might send the wrong message.

Yes, we will.

Senator **Glenn**. Let's go to a different area. I will start on this and will have to leave when the buzzers go off again.

A complaint we hear frequently from military officers from time to time—and it is not the biggest problem in the world, but I think it is something that we have to face—concerns the long wait between the time they are selected for promotion and when they are actually promoted.

Do you have any policy guidelines that you give to the services on this?

If so, what are they?

Dr. **Armor**. I would like to ask General Lukeman to address this timing issue. It is a complicated one.

General **Lukeman**. We do not have any policy guidelines that would prohibit a service from selecting people well in advance of the time that they would be promoted.

It is an issue that, again, really needs to be looked at because there are substantial differences among the services where some people are on a selection list for well over a year before they are promoted.

What the services try to do is to select the correct number of people, given the promotion flow, given the numbers of people in the competitive category, and given the percentage of selection to meet their requirements.

In some cases, it looks like consistently more people are selected than are needed to meet requirements that year. We simply have to look at it.

Senator **Glenn**. I don't have any problem with this but I believe people who have been in awhile understand this, that the promotion board is selecting people that will be applied over a period of time, over the next year or whatever the time period is. I don't have any real question with that.

I think the problem arises sometimes in the frocking process, where people who have been selected are pulled out, for a certain purpose, and then they are put temporarily into a rank that they later on assume, and their colleagues view that as highly unfair in some situations, and I think sometimes it has been unfair.

Would you address the frocking problem. For those in the room who may not be familiar with the term, it is the practice of allowing an officer to assume the rank for which he has been selected, but not yet promoted.

It is looked at as temporary, until he gets his permanent promotion.

I hear the buzzer, so I will have to wait for the answer on that until I get back.

We will stand in temporary recess.

[A brief recess was taken.]

Senator **Glenn**. The hearing will resume.

On the frocking issue, I had posed a question and did not have time for the answer.

Do you have proposals in this area or regulations that will cover this or is it going to be left to the discretion of individual Secretaries? How are you going to control this?

Dr. **Armor**. We indeed put into place a directive that formalized rules and procedures and numbers and what have you last year, following the discussion of that. I believe it came up in Chapman Cox's confirmation hearing.

Let me say that that directive is working very well.

I might mention that we had 3,934 officers frocked at the field grades, O-4 through O-6 prior to the directive. At the present time, we only have 714. So the directive has worked to reduce the numbers of frocked.

Senator GLENN. Are you convinced that we need the 714?

Dr. ARMOR. Well, what the directive did is it specified the reasons, and I think we acknowledge that there are times in the performance of a job, given these delays and when you can move somebody into those positions, that there are circumstances where it is justified, given the nature and the function of the job.

The directive simply says that you have to justify the nature of the job and the duties performed; that it is essential for the effective performance of that job, and then we put some restrictions on it.

So I think the fact that it has dropped down to one-third of its original number, or more so, is an indication that it is working.

Senator GLENN. Okay. Let me toss out some other figures here. It is my understanding that the Department of Defense has about 80 officers frocked to one star grade, to general rank, and about 20 to the two star grade.

Dr. ARMOR. The exact numbers are 72 officers frocked to brigadier general, and our directive specifies a miximum of 95.

Senator GLENN. And you feel that that is a legitimate requirement, that we have that many? It seems like a lot of people.

Dr. ARMOR. It is a lot of people. But we are completing a study which we will be sharing with you very shortly concerning general and flag officers, and there are positions right now that require such a person, such a rank, particularly in a number of areas, in our attaches, defense attaches, in the terms of services that may not have the room for them, but that person is interacting at the one star level. There are jobs that require a one star, but there are not the openings for that one star position.

Senator GLENN. I would appreciate it if you would provide for the committee an analysis of that so that we know what these positions are. But, in your opinion, are more of these people, who are on joint staffs, with military attache duty, and things like that?

Dr. ARMOR. The one that I remember most recently is the military assistant to Mr. Taft, for example. There are people who serve in those roles, where their position requires, in terms of who they interact with, a certain rank, and the directive says that if you can justify the nature of the rank and you don't have the positions or the numbers to do it, you may frock.

Now, we have limited it to 95, out of a total of 1,073 general and flag officers. So we think that is a very modest limitation, and it does let us put people in positions where a flag or general officer rank is required.

We will be happy to provide you information on where they are.

[The information follows:]

ANALYSIS OF POSITIONS FILLED BY FROCKED O-7S

Of the 72 general/flag officers frocked to the grade of O-7 at the present time, 44 percent are in commander/deputy commander positions, 31 percent are in joint duty positions, 17 percent are in service headquarters billets and the remaining 8 percent are in positions at other headquarters.

Senator GLENN. I have always thought that we should examine that requirement, too, because if one service happens to put someone with two stars, in a position then it is assumed that every other service has to have a two star in a certain rank, when maybe the requirement for having that first job at a two star was in serious question. So then we wind up with four or five people on a joint command frocked and up at an elevated level just because one service assigned somebody to it that was higher than maybe they should have to begin with. And then it gets locked in just by custom, and we wind up with the situation that we tend to have right now.

Frocking just sort of circumvents the ceilings, it can circumvent the ceilings that we have on general and flag strength, can't it?

Dr. ARMOR. The purpose is not to circumvent the ceiling. Obviously, the person does not receive the actual rank or the benefits or the salary. The purpose is simply in those positions where that rank is appropriate in the person effectively performing his or her job to be able to wear that rank where the numbers, the successions, and the promotions and what have you do not permit that person to assume it without going over the ceiling.

So it is not the intent to exceed the ceiling.

Senator GLENN. I suppose I have always seen that, even on a joint command. Let's say someone is a two star rank and another, is a one star, not on a joint command, but on a joint board of some kind; and so, we frock the person up to that level.

The advice the one star gives is not one bit better because he now has two stars than it was with one star. This being a joint board that is not a command function anyway. So I have always questioned this frocking procedure—maybe because I never got frocked. [General laughter.]

Dr. ARMOR. I will defer to General Lukeman because I think it is an area, particularly at the general and flag officer level, the senior officer level, that is important. Rank, as you must know, really makes a very, very big difference in the military in terms of one person dealing with another.

There are positions that we defend because of having the analogous rank in some paralled organizations that you deal with.

We feel that that is a legitimate concern.

I would like General Lukeman to address that.

General LUKEMAN. Thank you very much. I know the chairman knows a great deal more about this than I do.

I think the only thing that I could add, sir, is that the amount of frocking that we are now doing is a compromise between what the services have identified as legitimate requirements, if you will, for general and flag officers and the authorization in law for 1,073.

Senator GLENN. This is not a very small item.

Staff just gave me some figures, and I trust they are accurate. We have 1,073 as the legal ceiling on generals and flags. We have 96 frockees to one star. So, in effect, we have violated our ceiling by some 10 percent here, or close to it.

Dr. ARMOR. The statistics, sir, are inaccurate.

We have 72 officers frocked at the brigadier level.

Now, there are some frockees who are——

Senator **Glenn**. The limit is 96, is it?

Dr. **Armor**. The limit is 95.

Senator **Glenn**. We can circumvent things by about 10 percent, then, or about 9.5 percent, right?

Dr. **Armor**. Well, you are using the word "circumvent," sir, but that is not our intention.

Senator **Glenn**. We are circumventing our legal ceilings. That is what I am talking about.

Dr. **Armor**. They do not enjoy the rank and privileges of that position.

Senator **Glenn**. But you just told me they enjoy the rank and privileges, and had the same clout. That is the reason you promoted them.

Dr. **Armor**. But they do not have the benefits. They do not have the actual rank.

Senator **Glenn**. Okay, they just don't get the pay.

Dr. **Armor**. They don't get the pay.

Senator **Glenn**. But they get the rank and the privileges.

Dr. **Armor**. They get the rank.

Senator **Glenn**. That's the reason you do it, to give them the rank and privileges.

Dr. **Armor**. Yes. I meant they didn't get the actual rank.

Senator **Glenn**. Well, look at that one very carefully.

We would like to keep in touch with you on that.

Dr. **Armor**. Could I mention, sir, that we do have a major study that is nearing completing by the Hay group, an outside consultant, to look at the whole area of general and flag officer requirements before any final action on this is taken.

I think it would be worth the committee taking a look at that report. We will be over here to brief you on it and staff.

Senator **Glenn**. Will it be just generals, or does it go across the board to all frocking, of all officers?

Dr. **Armor**. Well, it is looking at generals and flags. It is a general and flag officer requirement study, but for the purpose of establishing appropriate cut-off points it also looked at the O-6 rank, the colonel category.

Senator **Glenn**. Will you give us a report on this so that we can include it in our record of all the frocked individuals by all ranks, across the board?

Dr. **Armor**. Yes. We would be very happy to.

Senator **Glenn**. Good. We can then see what the picture is.

If you have the figures available, you might do it by time, for the last 10 years, or whatever records you have.

Do you have that, General?

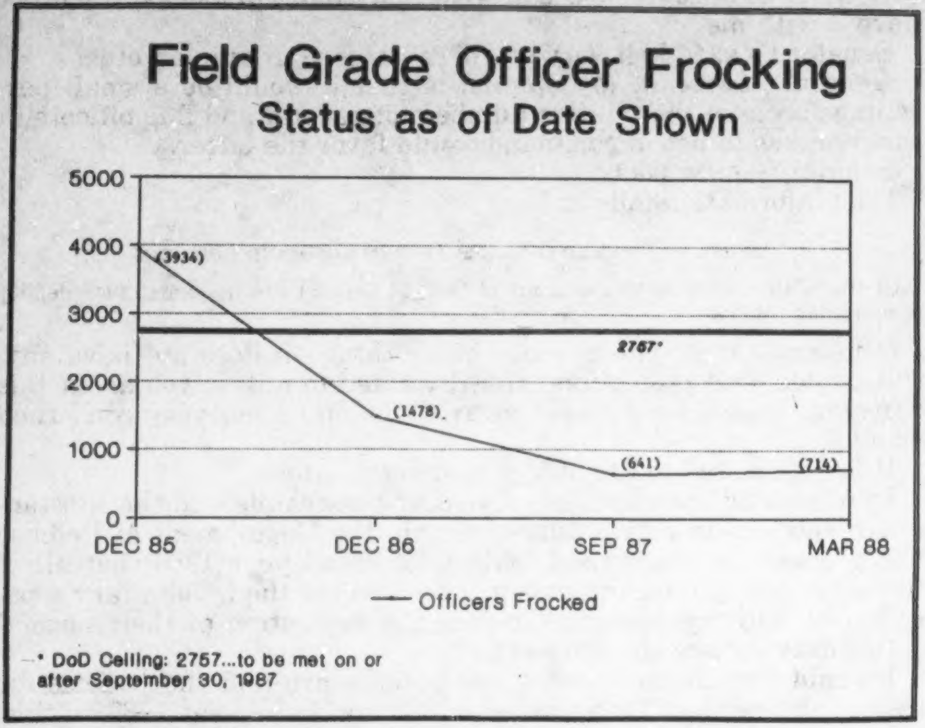
General **Lukeman**. Yes, sir, we do.

Senator **Glenn**. Okay. That is what I would like to see, the trend lines in each rank.

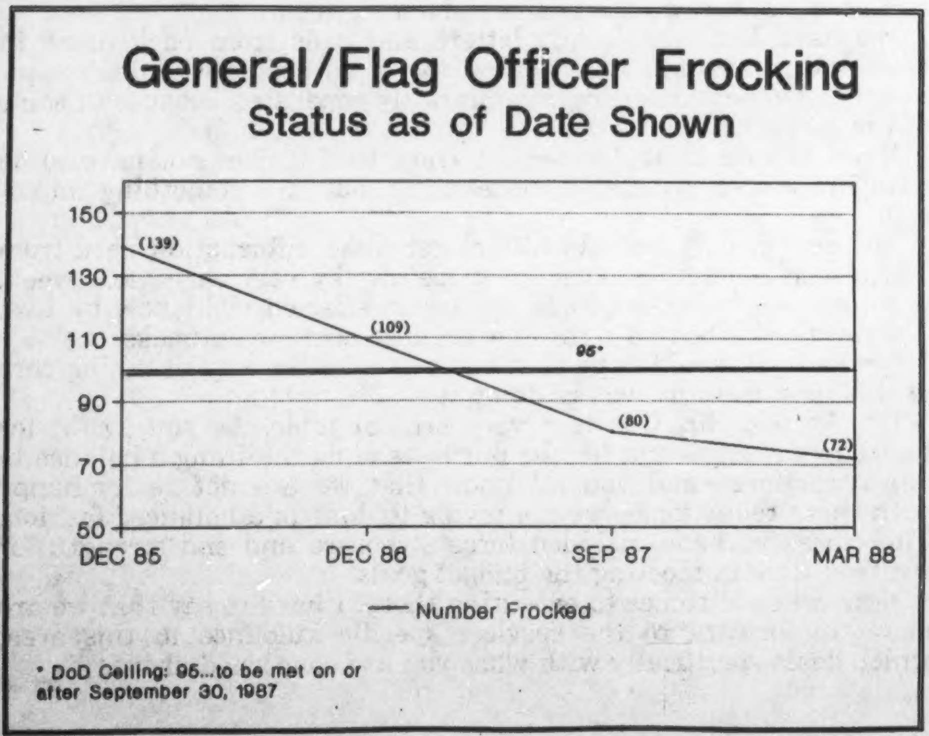
Give that to us in a graph, if you can. That would be the easy way to do it, so that we can see the trend in each rank. Then we will know in what direction we are headed.

[The information follows:]

TRENDS IN FROCKING LEVELS ON GRAPHS



* DoD Ceiling: 2757...to be met on or after September 30, 1987



* DoD Ceiling: 95...to be met on or after September 30, 1987

Senator **Glenn**. I have one other question on frocking.

How many people do we have frocked in actual command?

General **Lukeman**. We can give you that number, sir. I don't have it with me.

Senator **Glenn**. Is it very small? What is your opinion of it?

General **Lukeman**. My opinion is that it would be a small percentage because the relative numbers of general and flag officers in command as to not in command would favor the latter.

Senator **Glenn**. Okay.

[The information follows:]

NUMBER OF FROCKED OFFICERS (O-7) IN COMMAND POSITIONS

Of the officers frocked to the grade of O-7, 44 percent are in commander/deputy commander positions.

Senator **Glenn**. There is one other thing—it does not have anything to do with promotion—that I wanted to talk to you about this morning. I am sure you are aware of it and I am very concerned about it.

It is not related to the officer promotion issue.

I understand that, because of budget constraints and the substantial reductions in active duty strength, the Department of Defense has proposed in its revised budget for fiscal year 1989 that all of the services begin to implement programs for the involuntary separation of military personnel before the expiration of their normal active duty service commitment.

I would like to know what our policies are and the policies for each of the services for fiscal year 1988 and fiscal year 1989 on this.

I would appreciate your comments on it this morning. Since this is a problem that we are hearing about right now.

We have had complaints, letters and calls from back home in Ohio and from some other places, too, from people who don't want to get out. They are being involuntarily separated because of some of the cutbacks.

What is your policy on this? I know that it does not have to do with the officer promotion, necessarily, but it is something important.

The reason why I would like to get some information back from you just as quickly as possible—hopefully by very early next week, if we can—is because people are being affected right now by this. They are being booted right now because of these cutbacks.

Obviously I would hope that there is a better way of taking care of this than the way we are doing it.

Dr. **Armor**. Sir, this is a very critical topic. As you know, for budgetary reasons and for the purposes of maintaining a balance in our reductions—and you all know that we are not really happy with these reductions—we are trying to do it in a balanced fashion. Therefore, we have included force structure and end strength for the first time in meeting the budget goals.

Now, when it comes to executing those, I have to say that we are about to forward to the services specific guidance in this area, which deals specifically with what you are concerned about.

Senator **Glenn**. When will they have that guidance? Do they have it now?

Dr. **Armor**. The guidance probably will be ready for the Secretary to sign within a couple of days. We are in the process of finalizing the details.

As you know, we just finished the officer requirements report. You will be hearing about that in about 2 weeks in another hearing.

But we are issuing guidance to the services that deals with the implementation of the findings of that report and the related force and end strength reductions that they are taking.

If you are to do that without creating terrible force management problems in the future, you cannot take all of the reductions in accessions. You cannot take all of the reductions in the junior force; you cannot take all of the reductions in the senior officers or careers.

You have to implement this in a balanced fashion. That is the basic thrust the Secretary's guidance will be to the services.

Senator **Glenn**. Right now, is each service on its own, to do its own job on this?

Dr. **Armor**. Well, each service generally has the responsibility for detailed force management.

Senator **Glenn**. Well, right now this is a DOD-wide problem.

Dr. **Armor**. It is a DOD-wide problem. That is why we are preparing Secretary of Defense guidance on the balance question.

For example, there is no way that we will avoid complaints from individuals.

Senator **Glenn**. Well, I am mainly talking about the enlisted area. I believe you were still addressing officers.

Dr. **Armor**. I'm sorry. It is a general thing.

Senator **Glenn**. I'm talking about across the board here.

Dr. **Armor**. It is an across the board problem for us because we are reducing officers and enlisted personnel.

Senator **Glenn**. We have had some complaints from officers, but we have had a lot more from enlistees who are being forced out, who wanted to make the service a career. For whatever reason, they are being terminated early because of the budget cuts and that sort of thing.

Dr. **Armor**. Numerically there are more of them, sir. Probably if the same percentage complained about leaving, you are going to have more letters from enlisteds than you are officers.

Senator **Glenn**. Well, I am not addressing this just because we received a few complaints. I am addressing it because I think it is a real problem for the services. I think a lot of those cases are being dealt with unfairly.

Maybe the budget constraints are what pushed us into this. But I will just voice one of my fears. I hope that because of the budget cuts that were forced on us by the economic situation that we are in, the proposals of the administration—and these things were worked out jointly, but we get the heavy hand on us over here as the bad guys in this, even though it was the administration also—I hope that these cuts are not being made specifically to rub Congress' nose in what happened over here.

I get the feeling that sometimes some of these draconian measures are taken to say to us well, we'll show you because you cut our budget.

Dr. **Armor**. The end strength reductions which, if taken in a balanced fashion, will mean reductions across the board, cannot be all taken in one group. If you were to take them all in accessions, you would produce a terrible force management dip, a dip in the structure, and you would not be able to manage your force.

Senator **Glenn**. What was the role in your office in reviewing and approving the policies that each service has right now with regard to these forced attritions?

Dr. **Armor**. Well, we participated in the DRB process, in the review this last fall, and we are part of every discussion about the taking down of manpower consonant with force structure changes and the budget agreement.

Senator **Glenn**. But the policy that each service has, was it submitted to you and you specifically approved it, or were you just part of a discussion process?

Dr. **Armor**. No.

We did not approve specific policies that each service will use to reduce its force. We don't have any numbers that say that each service has to take so many accessions and so many junior personnel, you know, first termers, and so many career enlisteds. We do not have quotas or guidelines on that.

This is what we are going to address in this guidance, because we are concerned that it be done in a balanced fashion.

Senator **Glenn**. Okay.

Do you have the figures back from each service yet?

What I am going to ask you to do is, by very early next week, if you can, send me an estimate of the number of people, by grade, years of service, and who will be affected.

Dr. **Armor**. I don't believe that the services in all cases know in 1988 and 1989 what these numbers are going to be. In fact, until the Secretary gives the guidance, I am not sure that they will have even made final totals.

Senator **Glenn**. Well, I would think they have that because they have already given us the numbers of people who are going to be terminated, the reduction in overall end strength.

That should give you a clue as to the numbers.

Dr. **Armor**. Since the Secretary has yet to issue the guidance that I am trying to discuss now and explain to you, whatever the services may have on paper may not be the final execution because the Secretary's guidance is about to go out.

Senator **Glenn**. But it my understanding that the guidance has been given to the people in the field. They are being told to cut right now, at Fort Bragg and Cherry Point and you name it, wherever it is.

Dr. **Armor**. The Secretary of Defense has not issued his specific guidance.

Senator **Glenn**. But it is happening. That is the point I am making, it is happening and they are being told what numbers to cut back. So somebody has made those estimates in each service, whether you know it or not.

Dr. **Armor**. But I am not trying to imply that when the Secretary does this, we are not going to have anybody complaining or anybody cut back, because we are talking about a 20,000 end strength reduction in the Air Force, and we are talking about a 10,000 end strength reduction in the Army, and there are going to be people that have to go because of that reduction. That's all.

Senator **Glenn**. I understand that completely.

But what I am concerned about is that we have a lot of people who, for humanitarian reasons, family reasons, or whatever, are being terminated very abruptly, on a guillotined basis right now, which I really think in some cases is unfair.

The orders have already gone out on this. That is where I think we are dealing with a lot of our enlisted people and maybe some of our officers too, on a very unfair basis.

Dr. **Armor**. We will report to you what the actions are the services have issued. I only beg your forebearance that we may, in fact, be adjusting some of those numbers over the next several months.

Senator **Glenn**. OK.

[The information follows:]

Number of Individuals by Grade Receiving Early Separation

ANTICIPATED GRADE DISTRIBUTION FOR EARLY SEPARATIONS

Service	01-3	04-5	06	Total	E1-4	E5-6	E7-8	Total
Army	709	150	329	1,188	18,672	5,766	62	24,500
Navy	0	0	0	0	8,807	4,873	35	13,715
USMC	0	0	32	32	4,038	973	64	5,075
USAF	560	200	255	1,015	16,191	3,991	18	20,200
Total	1,269	350	616	2,235	47,708	15,603	179	63,490

Senator **Glenn**. As I've said, the cuts are underway right now. People are being told that they are out as of a certain date.

Dr. **Armor**. That's correct.

Senator **Glenn**. There was one brought to my attention yesterday. He got his orders that he is out by April 15, and he had 1½ years yet to go on his enlistment.

That is really a guillotine to somebody who thought he was making a career out of the military.

Now that is just one case, but I am sure there are hundreds of them out there right now like that.

So what I would like to know, as fast as you can get it to me is an estimate of the number of people, grade, years of service, and also are there humanitarian concerns being given in these cases?

I assumed, when we talked about the personnel reductions that were going to be required, that we were going to do all of this by attrition, that we just would not bring new ones in as the old ones phased out, and that would be it, and if people did not want to reenlist, that that would take care of itself and it would be adjusted over a 6, 8, or 10 month period, and there would not be a major problem.

Dr. **Armor**. That would be the ideal way. But the numbers that the services have to maintain to meet the budget requirements will not permit it to be done in a gradual 2 or 3 year process.

Senator **Glenn**. Well, it would not be 2 or 3. I don't know what percent of the military turns over every year. I thought we could do it by just not replacing people going out.

Dr. **Armor**. Sir, that cannot be done.

General **Lukeman**. We have been in the very fortunate position over the past several years of having very high retention, much higher than we had anticipated.

Senator **Glenn**. But we had more than 30,000 people a year going out and being replaced.

General **Lukeman**. Correct, sir.

Senator **Glenn**. Why are we spending millions of dollars for recruiting ads if we have all this retention and we cannot even take a 30,000 cut by attrition?

Dr. **Armor**. We have a second problem, sir, that we have to be worried about, which is the growing proportion of the career force.

Now, at some point, if we do not manage this, we are going to have 80 percent of the people in the career enlisted force. We could not possibly manage our force or afford it if we did not apply controls like that.

So, as we reduce the size, obviously we want to minimize the impact upon the career force; but if we exempt the career force, then that will create very serve management problems down the road for us.

Senator **Glenn**. OK.

I would like you to get back to me as soon as possible, early next week if that is possible, on this. Today is Thursday, but you can put somebody to work on this and get it back to us right away.

This is occurring now. This is not something that is going to occur next July, and we have a few days to mull it over. These people are getting their orders for termination right now, today. That is the reason why I would like some speed on this, if you possibly can do it.

Dr. **Armor**. We will certainly expedite it.

Senator **Glenn**. As I said, give me the breakdown on the people, grade, years of service, and is there a uniform humanitarian concern as to the type of people who are going out, and how is this being administered, and what are your plans to administer this properly DOD-wide, if possible.

Dr. **Armor**. We will certainly do that.

Senator **Glenn**. Good.

[The information follows:]

Information on Early Separation Programs and Humanitarian Concerns

Early separation of those not choosing to reenlist is the principal means of accomplishing these reductions. With respect to notification, each of the services has established a minimum of 45 days between announcement of the early separation program and the required decision to either reenlist or separate. For the enlisted force, this decision point is keyed to the date of planned separation. As an example, the Army announced its program on January 8, through a message to all of its activities. Those scheduled to separate between March 1 and March 31 were required either to reenlist by March 8 or separate. The plans for each service are:

Service	Program announced	First group affected [1]	Decision point
Army	January 8	March 1–March 31	March 8.
Navy	February 12	April 1–May 31	April 8.
USMC	February 3	April 9–July 7	April 8.
USAF	January 5	April 1–September 30	[2] March.

[1] Dates of planned separation.
[2] Date contingent upon local considerations.

Each separation program provides for humanitarian considerations, the management of which is outlined below. Medical conditions that would normally be a basis for retention beyond planned separation will continue under these programs. Those who are pending certain punishments, or are pending less favorable discharges, will not participate.

Management of Humanitarian Situations: [1]

Army: Hardship situations are referred to the first general officer in the chain of command for decision. The authority may not be delegated.

Navy: Referred to Naval Military Personnel Command for decision.

Air Force: Referred to the base discharge authority (normally the base or wing commander) for decision.

Marine Corps: Referred to Headquarters Marine Corps for decision.

Senator GLENN. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much, and thank you for calling this very important hearing today.

I just want to tell you, Dr. Armor, and General, that in my 10 years of service on the Armed Services Committee, I have never seen a situation before like the one that occurred last year with regard to promotions. The committee was caught in a most difficult position.

We had some excellent staff work on this and we spent an awful lot of time on something that we felt we had to spend time on, although we had other important matters to consider.

I remember that this came at a particularly difficult time for the committee. We were caught in a situation of not wanting to interfere in the promotion procedures, but when we looked into it, we found that we would be derelict in our duties if we did not.

Your testimony here today is probably going to help us make the decision as to whether the subcommittee will recommend to the full committee whether or not we need legislation in this area. I think primarily that will likely go forward, or not go forward, on the recommendation of Chairman Glenn.

But I cannot drive home this problem enough.

I know this was a wracking thing for the Marine Corps. It was a wracking thing for the committee because we were bending over backwards to do what we thought was right, with the promotion policies on the one hand and not a lot of publicity adverse to the corps on the other.

So I just wish to say that I think everyone has learned his lesson. We are alerted and attuned to this, and we hope we will not have to spend our time on matters like this in the future.

If the rules were followed, then we would not have found ourselves in the delicate position that we did, as a committee.

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[1] Separation is deferred pending review and decision.

I just want to tell you what a difficult thing this was for the members of the committee, collectively and individually, because we were sincere about this, as I think both of you have been.

So there is just one measure that I would like to leave with you. I would hope you would take back the message that the committee was very much concerned about this. I have never seen the committee as hesitant to know what was right and what was wrong for any time so long as I have been here.

That is the only message that I have, Mr. Chairman.

I thank you both for coming over and giving us the testimony that you have today.

Thank you very much.

Senator **Glenn**. Thank you.

Before we end this, let me say that we have not had too many of our Senators here today because we do have other hearings going on, and also votes on the floor and so on.

We do have an excellent staff on this committee, and I would like to see if staff has any questions.

Fred Pang, do you have any?

Mr. **Pang**. No, sir, I don't.

Senator **Glenn**. David Lyles used to be on the staff on this subcommittee and is now on the full committee.

David.

Mr. **Lyles**. Thank you, sir, but no.

Senator **Glenn**. Pat, what about you?

Mr. **Tucker**. No, sir.

Senator **Glenn**. Arnold, do you have any questions you want to ask?

Mr. **Punaro**. Thank you, Mr. Chairman, but no.

Senator **Glenn**. Gentlemen, this is an important responsibility that we have on the military promotion system.

As I said, this committee looks at this as a sacred duty, and I do not overstate that. If there is anything in the military that is sacrosanct, in a way, it is the promotion system, and any time something gets in the way of that and fouls it up, or gives the appearance of impropriety or unfairness we have to stomp on it quickly.

This is not just at the two, three, and four star ranks that we are talking about, flag ranks. It affects everyone. Because when the troops out there, read things in the paper or in the service publications about possible improprieties or that there is a cloud over officer promotions, they wonder what is going on downhill and they have every right to wonder.

So that is the reason we have taken this on as such an important issue. We are not trying to blow it out of all proportion. But we are trying to stomp on it before it really becomes something bigger.

That is the reason we appreciate your cooperation, and we would appreciate the answers we have asked to be sent over as promptly as possible.

Dr. **Armor**. Yes, sir.

Senator **Glenn**. Thank you all. It has been a very good hearing this morning.

I am sorry that we had to have one break in the middle for the vote, but it has been very productive and we appreciate your being here this morning.

The committee will stand in recess, subject to the call of the chairman.

[Questions for the hearing record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR JOHN GLENN

CHANGES TO AUTHORIZED NUMBER OF SELECTIONS ON A BOARD

Senator **GLENN**. Dr. Armor, I congratulate the Department for the changes it has made to the DOD regulation concerning officer promotions. For the most part, I think those changes were either required to reflect the law as it now stands or made to improve the procedures which were found to be deficient. However, in one area I question the authority of the Department and that is in the provision which permits a service Secretary, with the permission of the Secretary of Defense, to change the number of authorized selections even after a selection board has reported. Section 618 of title 10, United States Code, appears to limit the authority to return a board report for further processing to those cases in which the board has acted contrary to law or regulation. If that is true, my question to you is under what statutory authority is a service Secretary given the power to return a board report for further processing merely because the Secretary then wants to increase the authorized number of selections?

Dr. **ARMOR**. Thank you for the very positive feedback concerning the changes we have made in the DOD directive on the Defense Officer Promotion Program. With Sections 615 and 616 of title 10, United States Code, as the basis, our current directive does allow a service Secretary to increase the number of officers to be selected after the board convenes but this should occur prior to the time he sees the board results. Our study group is evaluating ways to clarify this procedure in our directive.

Senator **GLENN**. Does a service Secretary have the same authority to decrease the authorized number of selections after seeing a board report? That is not addressed in the DOD directive; why not?

Dr. **ARMOR**. The Department has had no known instances to date that required a decrease in the authorized number of selections but there is no reason not to include such a possibility in the directive and we will carefully consider it.

Senator **GLENN**. Regardless of whether the law presently permits a service Secretary to return board reports for further processing merely to increase or decrease the authorized number of selections, should that authority exist at all, and if so, why?

Dr. **ARMOR**. We believe the service Secretary should be able to change the authorized number of selections prior to the time he learns of the board results in order to respond to last minute changes to the needs of the service.

AUTHORITY OF A SERVICE SECRETARY TO PROVIDE MAXIMUM SKILL GUIDANCE

Senator **GLENN**. As the result of a case last year, it was determined by the General Counsel of DOD that a service Secretary does not have the authority to direct a maximum number of selections of officers with particular skills within a competitive category because that would violate the statutory guidance that selection boards must select those officers which it believes are "best qualified" for promotion to the next higher grade. Presuming that is the status of the law, do you believe that a service Secretary should have that authority without having to create a separate competitive category for officers having those particular skills?

Dr. **ARMOR**. The question of whether a service Secretary should be authorized to provide maximum skill guidance within a competitive category as well as minimums is being reexamined by our study group. We will advise you of our findings.

Senator **GLENN**. If the answer to the previous question is "no", would you then advocate that the Secretary of the Navy, if he believes that it is important to balance, or change the present balance, of officers with submariner, aviator, and surface warfare skills, break up the present unrestricted line of the Navy into three competitive categories so that submariners compete only with submariners for promotion, for example?

Dr. **ARMOR**. The question of creating competitive categories to make adjustments or achieve balance among skill groups will also be evaluated by our study group. As stated previously, we will be happy to advise you of our findings.

NEED FOR SELECTION BOARDS FOR ONE- AND TWO-STAR OFFICERS

Senator **Glenn**. Presently the law provides for competitive selection board procedures for promotion to grades up through and including two-star rank. Promotions to three- and four-star rank is left to the sole discretion of the President. Is that present break point, that is between two- and three-star rank, the appropriate one or should the President be given the sole authority to pick officers for promotion to all flag and general ranks? Why?

Dr. **Armor**. The present break point between two-and three-star does appear to be the appropriate breaking point between selecting general/flag officers primarily by selection boards versus the discretion of the President. The three- and four-star officers comprise only 15 percent of the general/flag officer numbers in the Defense Department and occupy positions specifically designated as "positions of importance and responsibility" by the President in accordance with section 601, title 10, United States Code. The unique qualities of three- and four-star positions in terms of their degree of responsibility, authority, special qualifications, and international political impact dictate the need for providing the President with maximum flexibility in selecting the best qualified individual available. With the numbers of officers eligible for promotion to the grades of one- and two-stars, the selection board process is the most appropriate method for selecting the best qualified individuals while recognizing the needs of the military services.

AUTHORITY TO DISAPPROVE A SELECTION BOARD; THE TERM "MODIFY"

Senator **Glenn**. I understand that the President's authority to "approve, modify, or disapprove" selection board reports has been delegated to the Secretary of Defense and that authority to approve reports have been, in turn, further delegated to the service Secretaries. The President's authority to remove an officer's name from a report cannot be delegated. If a service Secretary can, exercising the President's power to approve, in fact approve a report how can the Secretary of Defense subsequently disapprove that report since, in law, final action on the report has been taken by the service Secretary when he approves the report in the name of the President?

Dr. **Armor**. This is another question which is being reviewed by the study group to determine if the policies of the Department are consistent with applicable statutes. Our present position is that the delegation of Presidential authority to approve selection boards to the service Secretaries does not obviate the plenary authority of the Secretary of Defense for all matters within the Department of Defense per section 113, title 10, United States Code. This belief is reflected in the fact that officer selection board actions approved by the service Secretaries are subsequently routed through the Secretary of Defense and the President for concurrence before being submitted to the Senate for confirmation.

Senator **Glenn**. Since no one can add a name to a selection board report and only the President can remove a name from a report, what power does the Secretary of Defense have as a result of the delegation to him of the power to "modify" reports? Can you give us any example of a lawful modification of a report, a power of the President which cannot be delegated?

Dr. **Armor**. We have no additional clarification of the meaning or intent of the word "modify" as related to Presidential/Secretary of Defense authority on selection board reports. Currently, it appears to add nothing of substance to the statute but we are giving this issue further review in our study group and you will be advised of our findings.

[Whereupon, at 12:35 p.m., the subcommittee recessed, to reconvene upon the call of the Chair.]

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